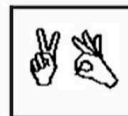


DATE: March 12, 2020
TIME: 10:00 a.m.
PLACE: Transportation Authority of Marin
900 Fifth Avenue, Suite 100, San Rafael, California

BOARD MEETING AGENDA

- A. Approve Minutes of January 9, 2020 Regular Meeting**
- B. Report from Executive Officer (Frank)**
- C. Public Comment**

Anyone wishing to address the Board on matters not on the posted agenda may do so. Each speaker is limited to two minutes. As these items are not on the posted agenda, the Executive Officer and members of the Board may only respond briefly but topics may be agendaized and taken up at a future meeting. Public input will be taken as part of each agendaized item.
- D. Approval of and Authorization for the Executive Officer to Execute a Streetlight Master License Agreement for Use of MGSA-Controlled Space on Streetlight Poles with ExteNet Systems (California) LLC for a 5 Year Initial and Potential Extension Terms (Frank and Brown)**
- E. Accept MarinMap Asset as MGSA Property (Frank)**
- F. MGSA Fiscal Year 2020-21 Ad Hoc Budget Subcommittee Appointment (Board)**
- G. Notice to MGSA Members Regarding Its Intent to Add the Cable Television Franchise and Public, Educational, and Government Access Program and Transition MTA Program Responsibilities to MGSA (Frank/Byers)**



March 12, 2020 MGSA Board Agenda

- H. Introduction and First Reading of an Ordinance to Establish a Public, Educational, and Governmental (“PEG”) Access Fee (Frank/Byers)**
- I. Streetlight Maintenance Upcoming Contract Development Process and State of the Industry (Frank/Condry)**
- J. Office Space Lease at 555 Northgate Drive, Suite 102, San Rafael (Frank)**
- K. MGSA Executive Officer Recruitment and Article 9.3 of MGSA JPA Agreement (Middleton and Alilovich)**

CLOSED SESSION

- L. Closed Session pursuant to Government Code Section 54957(b)(1), PUBLIC EMPLOYMENT, Title: Executive Officer**
- M. Closed Session pursuant to Government Code Section 54957(b)(1), PUBLIC EMPLOYEE PERFORMANCE EVALUATION, Title: Executive Officer**

OPEN SESSION

Report out from Closed Session

- N. Adjournment**

NEXT SCHEDULED MEETING: May 14, 2020

Distribution: Clerk to the Board of Supervisors for posting; San Rafael City Clerk for posting; City/Town Managers/County Administrator; Novato City Clerk (w/minutes); Dave Byers, General Counsel; Wayne Bush; Jeff Rawles; Bruce Anderson; Eric Dreikosen; Madeline Thomas.



555 Northgate Drive, Suite 102
San Rafael, CA 94903-3680
415 446 4428
mgsastaff@marinjpas.org

BOARD MINUTES FOR MEETING OF JANUARY 9, 2020

The meeting came to order in the offices of the Transportation Authority of Marin, 900 5th Street, San Rafael at 10:00 a.m.

MGSA Board Members Attending: President Craig Middleton, Vice President Greg Chanis, and Members Cristine Alilovich (arrived 10:10), Adam McGill, Angela Nicholson, and Andy Poster were present. Sean Condry was absent.

Program Contractors Attending: Executive Officer Michael Frank and General Counsel Dave Byers

A. Board Meeting Minutes of November 14, 2019 Board Meeting

Motion by Nicholson, seconded by McGill to approve the minutes. Motion was approved 5 – 0 – 2 with Condry and Alilovich absent.

B. Report from Executive Officer

The Executive Officer reported on activities since the last meeting. In particular, he mentioned:

- Telecommunications – There are presently no pre-reservations of streetlights by any carriers.
- Marin Telecommunications Agency (MTA) – Preliminary exploratory discussions are occurring about the possibility of MTA becoming a program under MGSA.
- Reorganization of contracts for administration of MGSA programs.
- MarinMap – Positive meeting with the County Assessor regarding developing an expanded contract for information/data being transferred to MarinMap.
- Lease – Presently renegotiating office space lease.

C. Public Comment

There was no public comment.

D. MCSTOPPP Fiscal Year 2019/20 Proposed Budget

MGSA Board Meeting Minutes for January 9, 2020

Following an introduction of the item by Executive Officer Frank, Rob Carson, MCSTOPPP Program Manager, presented the proposed FY 2019-2020 Budget.

Following discussion, a motion was made by Chanis, seconded by Poster, approving Resolution 2020-01 recommending adoption of the MCSTOPPP proposed budget by the Marin County Board of Supervisors. Motion was approved 6 – 0 with Condry absent.

E. Annual Fiscal Year 2018-2019 Financial Statement and Auditor’s Report

Following comments by Executive Officer Frank, a motion was made by Poster, seconded by Chanis, to accept the Annual Fiscal Year 2018-2019 Financial Statement and Auditor’s Report. Motion was approved 6 – 0 with Condry absent.

F. Streetlight Maintenance Upcoming Contract Development Process

Following comments by Executive Officer Frank and a Board discussion, a motion was made by Poster, seconded by Middleton, to have the subcommittee appointed by the Marin Public Works Association research the state of the industry and report back at the next MGSA Board meeting. Motion was approved 6 – 0 with Condry absent.

G. MGSA FY 2019-20 Work Plan Status and Input on FY 2020-21 Work Plan (Frank)

Following a presentation by Executive Officer Frank, there was a brief discussion and some questions about potential areas to research regarding shared services. Staff volunteered to approach TAM and MCEP to discuss a couple of ideas raised. No action requested or taken.

H. MGSA Executive Officer Recruitment and Article 9.3 of MGSA JPA Agreement

A motion was made by Middleton, seconded by Alilovich, to meet the obligations of Article 9.3 of the MGSA JPA Agreement and appoint a subcommittee of Board members Middleton and Alilovich to conduct a recruitment and report back at the next MGSA Board meeting. Motion was approved 6 – 0 with Condry absent.

CLOSED SESSION

I. Closed Session pursuant to Government Code Section 54957(b)(1), PUBLIC EMPLOYMENT, Title: Executive Officer

MGSA Board Meeting Minutes for January 9, 2020

J. Closed Session pursuant to Government Code Section 54957(b)(1), PUBLIC EMPLOYEE PERFORMANCE EVALUATION, Title: Executive Officer

The Board came out of Closed Session and requested that the two closed sessions be agendaized for the next Board Meeting.

K. Adjournment

The meeting adjourned at 11:53 p.m.

A handwritten signature in blue ink that reads "Michael S. Frank". The signature is written in a cursive style with a horizontal line underneath the name.

Michael S. Frank, Executive Officer



555 Northgate Drive, Suite 102
San Rafael, CA 94903-3680
415 446 4428
mgsastaff@marinjpas.org

MEMORANDUM

DATE: March 12, 2020

TO: MGSA Board of Directors

FROM: Michael S. Frank, Executive Officer
Bob Brown, Consultant

SUBJECT: Approval of and Authorization for the Executive Officer to Execute a Streetlight Master License Agreement for Use of MGSA-Controlled Space on Streetlight Poles with ExteNet Systems (California) LLC for a 5 Year Initial and Potential Extension Terms

Recommendation

Approval of Resolution 2020-05 authorizing the Executive Officer to:

- Execute a Streetlight Master License Agreement (“SMLA”) with ExteNet Systems (California) LLC (“ExteNet”) for a 5 year initial term and potential extension terms to allow ExteNet to access and use MGSA-controlled spaces on streetlight poles for the purpose of providing communication services; and
- Delegate to the Executive Officer the authority to execute on behalf of the MGSA any documents necessary to administer the SMLA and non-substantive modifications to the SMLA that may be required and approved by MGSA’s legal counsel.

NOTE: This SMLA, and approval thereof does not authorize any specific installation of facilities by ExteNet. Instead, the SMLA sets forth the general terms and conditions applicable to such future installations that may be approved by local Marin jurisdictions and establishes the process and requirements that the MGSA will follow.

Background

On April 10, 2013 the MGSA approved an SMLA with ExteNet Systems. ExteNet subsequently obtained two streetlight permits and installed equipment in Novato. Since the SMLA had exceeded its initial 5-year term and was inconsistent with more recently approved agreements with annual pole rental fees, the Executive Director terminated the agreement on September 12, 2019.

ExteNet wishes to enter into a new MLSA due to anticipated demand for wireless communications services providing greater data transmission speed which will require expanding their wireless antenna networks to improve both capacity and coverage in Marin County.

Generally, under federal law, and subject to certain conditions protecting local jurisdictions' public rights-of-way management and land use authority, local jurisdictions cannot prohibit fiber and wireless communication facilities from gaining access to the public rights of-way and utilities infrastructure. The extent to which streetlights fall into these requirements is less clear. Jurisdictions can, however, establish reasonable rates, terms and conditions of access to infrastructure in the public rights of-way, including adopting rules and regulations relating to time, place and manner of attachment to that infrastructure.

Telecommunications law changed significantly with adoption on September 26, 2018 by the Federal Communications Commission of a declaratory ruling that further limited local authority over "small cell" (5G) wireless infrastructure in an effort to promote the new technology. The restrictions applicable to MGSA include the following:

- A limitation on the fees that local agencies may charge, including one-time fees, annual charges to use or attach to public property or use the public right-of-way. Fees must be reasonably approximate to costs, objectively reasonable and no higher than those charged to similarly-situated competitors in similar situations. The FCC provided fee levels which they consider "presumptively reasonable," including one-time processing fees of \$500 per application and annual fees at or below \$270 for access to poles. While these are not fee caps, they set the threshold for evidentiary presumptions, requiring justification for higher fees.
- A shorter application review "shot clock," allowing only 10 days to determine application completeness and 60 days to take action.

The FCC rules have been legally challenged by numerous public agencies, wireless service providers and investor-owned utilities. These petitions have been taken up by the Ninth Circuit Court of Appeals, although enforcement of the FCC rules was not stayed by the Court while the case moves forward. Oral arguments were heard in February, and a ruling is anticipated in late 2020. In addition, the D.C. Circuit Court of Appeals in August ruled that the FCC rulemaking cannot bypass environmental impact and historic preservation review, which may further delay eventual adjudication.

Despite the uncertainty surrounding the recent FCC rules, MGSA has developed an updated SMLA to address the interest of wireless communication service providers in accessing and using MGSA-controlled spaces on streetlight poles for the purpose of installing wireless antennas and related infrastructure. In addition to the SMLA, wireless communication and other telecommunications facilities are subject to the requirements of local municipal and county codes, many of which have updated their local ordinances regulating telecommunication facilities in response to the FCC regulations. The SMLA requires that, to receive a permit from MGSA to locate an antenna on a streetlight pole, the carrier must first

obtain all necessary planning, building and/or encroachments permits from the relevant local jurisdiction.

Discussion

Staff recommends that the MGSA Board approve the SMLA with ExteNet, which includes the following key terms and conditions, with modifications noted to two previously approved SMLAs:

Term - The initial term of the SMLA is five (5) years, and there is a right to extend the term indefinitely for additional five (5) year terms.

Termination - The SMLA may be terminated as follows:

- **Termination for Cause** - MGSA may terminate for cause upon ten (10) days written notice. A termination for cause means: (a) ExteNet has failed to cure a material default; (b) the CPUC, the FCC or other agency exercising jurisdiction revoked ExteNet's authorization to operate the Equipment; (c) ExteNet's authority to do business in California has terminated; or (d) bankruptcy.
- **Termination Without Cause** - The SMLA may be terminated without cause by either Party, with six months' notice, prior to the SMLA's five-year renewal. During the five-year term of the SMLA, ExteNet may terminate its right to operate its Equipment on any individual pole with thirty days' notice.
- **Termination For Public Necessity** - MGSA may terminate the use of any individual pole for public health or safety reasons but must use its best efforts to find a site to relocate the equipment.

Application Process - The SMLA lays out a process to facilitate efficiency, ensure that MGSA knows what equipment is located on what poles, and allow for an evaluation of the safety of the proposed equipment. A series of forms have been developed and are attached as Exhibits to the SMLA. The following processes are utilized:

- **Pole Reservation** - For administrative, visual, and potential safety reasons, it is MGSA's preference that only one carrier be located on a streetlight pole. To ensure that multiple carriers are not working on applications for the same poles, a reservation process has been developed. Once a pole is reserved by MGSA, application to the local jurisdiction and preparation of application to MGSA can proceed. A Pole Reservation is cancelled if there is no activity by ExteNet within sixty days.

- Request and Authorization - Once reserved and proceeding through the appropriate local jurisdiction, an application may be submitted to MGSA for use of a pole. The application must include the following:
 - Permits and authorizations from the local jurisdiction (e.g., planning, building and/or encroachment permits);
 - List of equipment to be attached to each pole including full construction drawings, location of power and fiber, and product specifications;
 - Report by a licensed engineer demonstrating that each pole can safely support the weight and wind loading of the proposed equipment, and the total number of watts on each pole and cumulative number of watts including other systems placed within 100 feet of each pole are safe for human exposure;
 - A letter from a licensed engineering firm opining that plans do not pose any safety concerns;
 - Appropriate fees.

The application materials will be checked for completeness by MGSA and routed for review by MGSA's electrical contractor (currently DC Electric). DC Electric will work with the applicant and PG&E as needed to verify information and proposed installation methods, will review engineering specifications and reports and will provide a recommendation for approval, modification or denial to the Executive Director of MGSA. At this point, the Executive Director will take action on the application.

Despite the shot clock time limits in the FCC ruling, the proposed SMLA includes provisions to extend the shot clock timeframe as reasonably necessary for MGSA to complete its review process.

Co-Location - MGSA maintains the right to decide if more than one carrier can locate on any individual pole. To the extent MGSA approves multiple carriers on one pole, the licensees are required to coordinate their activities with their competitors.

Fees - The SMLA lays out a series of fees. Aside from the Master License Agreement Fee, the other two fees escalate 3% annually. The fees outlined in the SMLA are as follows:

- Master License Agreement Fee - This is a one-time \$10,000 agreement development and processing fee. [The same as the recently approved SLMA with Crown-Castle Systems.]

- Per-Pole Processing Fee - This is a per-pole processing fee of \$500 for each streetlight pole going through the application or equipment change process. This fee should be adequate to cover the costs for additional administrative tasks by MGSA and for review by DC Electric.
- Annual Per-Pole Fee - During the term of the Agreement, ExteNet shall pay an annual fee of \$1,200.00 for each streetlight pole to which ExteNet attaches Equipment. However, due to the uncertainty regarding the outcome of the legal challenge before the Ninth Circuit Court of Appeals, the agreement provides that \$270 of this annual fee will be paid to MGSA, and the remainder of the annual fee will be placed in an escrow account held at a local bank, to be disbursed upon the conclusion of the court decision. If the FCC ruling is overturned, MGSA will receive all deposited funds. If the FCC ruling and its presumptive fee limits are upheld, ExteNet will receive the funds in escrow. [The same as the recently approved SLMA with Crown-Castle Systems.]

At this point in time, it is unclear how many applications will be submitted by carriers as well as how many will make their way through the local planning and permit processes. As a result, it is difficult to estimate the amount of revenue to be generated by this SMLA. Staff is recommending that after approximately six months of application activity, staff return to the MGSA Board with a recommendation for any sharing of revenue with the local jurisdiction permitting the Equipment. In the interim, any fee revenue would remain with MGSA.

Resource Impact

This SMLA, along with any others approved, represents an increased workload for MGSA. Staff will monitor as the program moves forward to see if any additional contract staff resources are needed.

Attachments

- D1. Draft Streetlight Master License Agreement with ExteNet Systems (California) LLC
- D2. Resolution # 2020 – 05 titled, “Approving the Streetlight Master License Agreement for Use of MGSA-Controlled Space on Streetlight Poles by ExteNet Systems (California) LLC.”

STREETLIGHT MASTER LICENSE AGREEMENT

THIS STREETLIGHT LICENSE AGREEMENT (“Agreement”) is made and entered into on _____, 2020 (the “Effective Date”), by and between the **MARIN GENERAL SERVICES AUTHORITY**, a Joint Powers Authority, (“MGSA”) and **EXTENET SYSTEMS (CALIFORNIA) LLC**, a California limited liability company (“ExteNet” herein), each being referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, MGSA owns, operates and maintains certain streetlight facilities located in the geographic areas within the political jurisdiction of MGSA and MGSA’s member agencies neither own nor control the streetlight facilities; and

WHEREAS, ExteNet desires to enter into this Agreement for the attachment and installation of certain telecommunication and utility equipment including, wires, cables, pipes, antennas, radios, wireless microwave and other backhaul equipment, Systems optic cables, conduit, ducts, control boxes, vaults, poles, power sources and/or other equipment, structures, appurtenances, improvements and services as depicted on drawings as required in this Agreement (collectively, the “Equipment”) used for the operation, maintenance and upgrade of ExteNet’s wireless telecommunications facilities to specified MGSA streetlight poles; and

WHEREAS, MGSA is willing to grant ExteNet a non-exclusive, revocable license for the attachment of the Equipment to MGSA streetlight poles, subject to the terms and conditions set forth in this Streetlight Master License Agreement.

NOW, THEREFORE, incorporating the foregoing recitals herein, the Parties agree as follows:

1. EFFECTIVE TERM OF AGREEMENT.

1.1 This Agreement shall be and remain in effect for a period of five (5) years from the date of mutual execution.

1.2 This Agreement shall automatically extend thereafter for successive terms of five (5) years each, unless otherwise terminated by either Party on not less than six (6) months advance written notice to the other Party prior to the date when such termination shall become effective. Such termination under this paragraph does not require a showing of cause. The initial term and all extension terms shall be hereinafter referred to as the “Term.”

2. MASTER STREETLIGHT LICENSE.

2.1 MGSA does hereby confer on ExteNet a non-exclusive, revocable master license (“License”) to access and attach its Equipment to certain streetlight pole(s), support arms, conduit space within the pole and any ground space owned by MGSA (the “MGSA Property”) and to replace, operate, maintain, upgrade, and use such Equipment during the term of this Agreement.

2.2 Pole Reservation. It is MGSA's preference that only one carrier is located on a streetlight pole. A Streetlight Reservation Form which is attached to this Agreement as Exhibit "C" is required to be submitted by ExteNet and approved by MGSA. Once a pole is reserved by MGSA (the "Reservation"), application to the local jurisdiction and preparation of application to MGSA must be underway within sixty (60) days within ExteNet's receipt of MGSA's approval of the applicable Reservation. A Reservation is deemed revoked if there is no activity by ExteNet within sixty (60) days.

2.3 Request and Authorization. Each preauthorized individual MGSA structure to which ExteNet wishes to attach its Equipment under the terms of this Agreement shall be listed on a Streetlight and Utility Pole Request and Authorization Form (hereafter, the "SUPRA Form") which is attached to this Agreement as **Exhibit "A."** Each Streetlight listed on the SUPRA Form that has been approved, will be incorporated herein by reference. The Supra Form shall include the following attachments:

2.3.1 Any necessary Planning Permits and authorizations from the local jurisdiction;

2.3.2 A letter from MGSA's Electrical Contractor stating that they have reviewed the SUPRA Form and its attachments (with the exception of local permits) with their recommendation for approval, approval with conditions, or denial with an explanation.

2.3.3 ExteNet's list of equipment to be attached to each Pole, full construction drawings of the proposed installations detailing methods of attachment, location of power and Systems runs into and up each pole, cut sheets, and actual product specifications.

2.3.4 Wet stamped report by a licensed engineer demonstrating: 1) that each pole can safely support the weight and wind loading of ExteNet's Equipment; and 2) the total number of watts per installation on each pole and cumulative total number of watts including other systems placed within 100 feet of each pole are within acceptable safety limits for human exposure at each pole.

2.3.5 A letter from a licensed engineering firm opining that ExteNet's plans for each pole and proposed Equipment do not pose any safety concerns and shall further attest that the MGSA Property can safely accommodate the Equipment.

2.4 Consistent with applicable laws and regulations, approval, conditional approval or disapproval and required changes shall be delivered to ExteNet within sixty (60) days after the receipt of the SUPRA Form for a Streetlight Permit.

2.5 At present the Federal Communications Commission ("FCC) established timeframes for the processing and issuance of all authorizations required for the deployment of telecommunications facilities ("Shot Clock"), including both City and

MGSA authorizations. However, individual City authorization processes fall outside the scope of MGSA administration and may vary from in scope and duration. Therefore, in the event that MGSA is unable to process and issue its authorization(s) within the applicable FCC Shot Clock period by reason of a city's respective authorization process, the Parties agree to negotiate to extend the applicable Shot Clock period to a future time certain as reasonably necessary for MGSA to complete its review and issue its determination through a signed Tolling Agreement.

The foregoing is not intended to limit, restrict, or otherwise prevent the Parties from agreeing to toll or extend the applicable Shot Clock. Consistent with applicable laws and regulations, the Parties may at any time toll or otherwise extend the applicable Shot Clock by mutual agreement.

2.6 Local Land Use Authorization. - As a condition precedent to each streetlight authorization, ExteNet must comply with all requirements of this Agreement and obtain any necessary land use or other permits from the local agency with land use jurisdiction.

2.7 ExteNet may install and operate only the Equipment identified in the applicable SUPRA Form. No other facilities or improvements may be placed on any MGSA Property without the written consent of the MGSA. Pursuant to the terms contained in this Agreement, the MGSA may co-locate other equipment on MGSA Property. ExteNet's Equipment shall be placed within or on MGSA's Property at the sole cost of ExteNet.

2.8 Equipment approved on a SUPRA Form must be installed by ExteNet within ninety (90) days of its receipt of MGSA approval or MGSA authorization is rescinded unless an extension is provided in writing by MGSA.

2.9 ExteNet shall use the MGSA Property for the purposes of transmission and reception of wireless communication signals for which it has received all necessary permits and governmental approvals. No other rights are granted to ExteNet herein. MGSA makes no warranties, implied or otherwise, as to the fitness of the MGSA Property for ExteNet's intended use or the condition of MGSA's Property. ExteNet has inspected MGSA's Property and accepts the same "AS IS", and agrees that MGSA is under no obligation to perform any work or provide any materials to prepare MGSA's Property for ExteNet. ExteNet agrees that, at no time during the Term (as defined in Paragraph 1 above) of this Agreement will it use or permit the use of the Equipment in ways that are inconsistent with the terms of this Agreement.

2.10 Additional Equipment and Equipment Modification. Prior to installing any additional equipment not previously authorized on a SUPRA Form, repositioning equipment on pole, or replacing equipment different than the originally authorized equipment, a new SUPRA Form must be submitted.

3. FEES. As its entire consideration for the rights granted herein, ExteNet shall pay the following (each a "Fee"; collectively, the "Fees"):

3.1 Master License Agreement Fee. ExteNet shall pay a one-time payment of \$10,000 within sixty (60) days from the full execution of this Streetlight Master License Agreement.

3.2 Per-Pole Processing Fee (the “Processing Fee”). During the term of this Agreement, ExteNet shall pay a per-pole processing fee of \$500 for each streetlight pole being submitted on the SUPRA Form. This fee would apply more than once if there is a need to submit and process a new SUPRA form due to a material change of originally authorized equipment.

3.3 Per-Pole Fee (the “Pole Fee”). During the term of this Agreement, ExteNet shall pay the sum of \$1,200 per light per year for rented poles for each streetlight pole to which ExteNet attaches Equipment and such annual fee shall commence and be due upon the first day of the month following commencement of installation of the Equipment (the “Pole Fee Commencement Date”) with respect to each individual location pursuant to each individual SUPRA form. The initial Pole Fee shall be paid by ExteNet within forty-five (45) days following the Pole Fee Commencement Date for each applicable streetlight pole to which ExteNet attaches its Equipment. The Pole Fee shall be paid annually and continue to increase in accordance with this Agreement.

3.3.1 Escrow Account. The Parties acknowledge that the FCC has adopted a Declaratory Ruling (FCC 18-133) that governs the amount MGSA may lawfully charge for the deployment of Small Wireless Facilities and which went into effect on January 14, 2019, but that such Declaratory Ruling is currently the subject of litigation. [City of Portland et al v. USA, FCC No. 18-72689 and related cases, which the U.S. Court of Appeal for the Ninth Circuit, is reviewing the validity of FCC Order 18-133 which limits, among other things, the amount that a government agency can charge for the use of a pole for telecommunications equipment.] Previously MGSA charged between \$1,000 and \$1,200 annual rent. The FCC Order would limit the amount to \$270 annually. Given that resolution of such litigation may result in changes to applicable law (“Change in Law”), the Parties agree that any and all Pole Fee amounts in excess of the FCC presumptively reasonable rates applicable at the time of execution of this Agreement shall be deposited into an escrow account (or equivalent) (“Escrow Account”) controlled by a third party. In the event the relevant provisions of the FCC Declaratory Ruling cease to be effective, (for example, because they are vacated or invalidated and have not been replaced by the FCC with an alternative provision setting a specific fee amount), MGSA shall be entitled to the amounts held in escrow.

The Parties authorize and instruct The BANK OF MARIN to hold in escrow the amounts described above in this section 3 in the manner described herein. Upon execution of this Agreement, the Parties shall deposit an executed counterpart of this Agreement with The BANK OF MARIN, which shall serve as the instructions to The BANK OF MARIN regarding the release of the any and all funds deposited into the Escrow Account. In accordance with section 3.3 above, ExteNet shall deposit into the Escrow Account all sums in excess of \$270.00, the recurring fee rate established in the Declaratory Ruling, into the Escrow Account. In the event the relevant provisions of the Declaratory Ruling concerning fees are in a final,

non-appealable determination, voided, vacated, overruled, or otherwise invalidated and the resultant change in law permits MGSA charge an annual fee in the amount \$1,200.00 as established above, MGSA shall be entitled to the funds held in escrow by The BANK OF MARIN.

Upon the effective date of such change in law, MGSA shall issue written request to ExteNet for the authorization to release the amounts deposited into the Escrow Account and held in escrow by The BANK OF MARIN. No later than fifteen (15) days after receipt of MGSA's request, ExteNet shall provide written notice to The BANK OF MARIN authorizing the release of all funds deposited in the Escrow Account to MGSA. The BANK OF MARIN shall send confirmation of release of any and all Escrow Account funds to both Parties.

If, however, the relevant provisions of the Declaratory Ruling are affirmed, a different rate (lower or higher than \$270.00) is established, or if MGSA is otherwise restricted, prohibited, or prevented from charging the annual fee of \$1,200.00 in a final, non-appealable determination, MGSA shall not be entitled to amounts in excess of the rates established in the Declaratory Ruling and The BANK OF MARIN shall release any and all Escrow Account funds to ExteNet alone.

The Parties agree that if a fee rate or basis for calculating such rate different from that established in the Declaratory Ruling is established by any final Change in Law, the Parties shall in good faith, consider and (to the extent permissible pursuant to applicable law) negotiate an amendment of this Agreement to comply with Change in Law.

Bank of Marin (Escrow Agent) shall rely on jointly signed written instruction from MGSA and ExteNet. Both MGSA and ExteNet shall jointly and severally hold the Escrow Agent harmless against and from any and all costs, expenses, claims, losses, liability, and damages (including without limitation reasonable attorneys' fees) incurred or made in connection with any claim, demand, suit, action, or proceeding (including any inquiry or investigation) that may arise out of or in connection with the Escrow Agent's performance in accordance with the terms of this Escrow Agreement, except in those instances resulting from the Escrow Agent's negligence or willful misconduct.

3.4 Late Fee. ExteNet's failure to pay the Pole Fee or any other Fees payable to MGSA in this Agreement within forty-five (45) days after the date such Fee is due shall be an event of default, and if such default shall occur, then ExteNet shall pay to MGSA a late charge of fifteen percent (15%) of the overdue Fee. ExteNet acknowledges that late payment by ExteNet to MGSA of amounts due under this Agreement will cause MGSA to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. The parties agree that such late charge represents a fair and reasonable estimate of the costs MGSA will incur by reason of ExteNet's late payment.

3.5 Fee Increases. Commencing on the annual anniversary of the Effective Date of this Agreement, the Processing Fee and Pole Fee payable by ExteNet

hereunder shall be adjusted and increased by three percent (3%) of the applicable Processing Fee and Pole Fee, rounded to the nearest \$10.

3.6 Taxes. ExteNet shall pay all personal property taxes on any personal property installed by ExteNet on MGSA Property before delinquency.

4. INSTALLATION.

4.1 ExteNet agrees that all construction and installation work shall be performed at ExteNet's sole cost and expense, in a neat, responsible, skillful and workmanlike manner only by qualified and properly trained persons and appropriately licensed contractors. Work shall use generally accepted construction and installation standards consistent with such reasonable requirements as may be imposed by the MGSA, the approved Working Drawings, and all requirements, rules, and ordinances as required by each jurisdiction where the MGSA Property is located.

4.2 ExteNet shall install and maintain the Equipment in accordance with the requirements of California Electric Code, National Safety Electric Code IEEE C2 (NEC) and any applicable local electrical code existing and as any of those codes may be amended.

4.3 ExteNet shall label the Equipment placed in or on any MGSA Property. Label information to be placed on each pole comprising MGSA Property shall include ExteNet's name, appropriate safety warnings and emergency contact information.

4.4 ExteNet shall repair any damage to the MGSA Property to the extent such damage is caused by ExteNet, any of its agents, representatives, employees, contractors, or subcontractors, or by the Equipment as a result of the installation, construction, operation, maintenance, and repair of the Equipment, at ExteNet's sole cost, as soon as possible, but in no event more than ten (10) business days after the date ExteNet was first notified by the MGSA or its Vendor of such damage. All repairs shall be performed such that the MGSA Property is restored to the condition in which it existed immediately prior to the damage and to the reasonable satisfaction of the MGSA. If ExteNet fails to repair any such damage within thirty (30) days of receipt of notice of the same, MGSA may, in its sole and absolute discretion, repair such damage and ExteNet shall reimburse MGSA for all costs and expenses incurred in such repair within thirty (30) days following receipt of an invoice and reasonable supporting documentation. ExteNet's obligations under this subparagraph shall survive termination of this Agreement.

4.5 ExteNet shall not during construction or otherwise impede access to or in any way obstruct, interfere with or hinder the use of the MGSA Property or access thereto. If any of the foregoing occurs, ExteNet shall take immediate corrective action, and shall use best efforts to correct same within twenty-four (24) hours of notice by MGSA.

4.6 ExteNet agrees, represents and warrants that (i) it shall obtain, at its sole cost and expense, prior to start of installation of the Equipment, all necessary

federal, state, local and municipal permits, licenses, and approvals and (ii) the Equipment, and placement of such Equipment, shall comply with all applicable safety standards, as modified from time to time, of any governing body with jurisdiction over the installation and use of the Equipment.

4.7 ExteNet shall not remove or alter any MGSA Property without the express written permission of the MGSA. The MGSA may in its sole discretion repair or replace any MGSA Property damaged by ExteNet's installation or removal of the Equipment, and ExteNet shall reimburse the MGSA its costs for such repair and replacement within thirty (30) days from receipt of MGSA's written request and reasonable supporting documentation.

4.8 In performing installation or removal of Equipment on MGSA Property, ExteNet shall leave the MGSA Property in as good or better condition than existed prior to said work taking place.

5. UTILITIES. ExteNet shall be responsible for arranging for electrical service by PG&E and paying any charges for electricity for the operation of the Equipment.

6. LIENS. ExteNet shall be responsible for the satisfaction and payment of all amounts due to any provider of work, labor, material, or services claiming by, through or under ExteNet, and shall keep the MGSA Property free and clear of all liens resulting from such labor, material and services. This paragraph shall survive termination of this Agreement and ExteNet shall pay all liens within thirty (30) days after notice has been received.

7. MAINTENANCE AND ACCESS. ExteNet, through its designated and approved employees and contractors, shall be solely responsible for the maintenance, repair, replacement and care of the Equipment and shall maintain the same in a clean, sanitary, and safe condition and in good repair and free of any defects at all times during this Agreement.

7.1 Activity Log. ExteNet shall maintain an activity log for each pole that describes all actions taken and the date and time of each activity. Upon request from MGSA, ExteNet will provide a copy of the Activity Log for the month(s) requested by MGSA in its entirety. A print-out of ExteNet's customary maintenance log will suffice for the purposes of this section, provided that such log includes relevant dates and a reasonable description of the work completed.

8. SAFETY PRECAUTIONS.

8.1 Safe Working Conditions. ExteNet shall perform all work on MGSA Property in a safe manner and in compliance with applicable federal, state, and local laws, rules and regulations. All work on such streetlight facilities shall be performed by ExteNet's trained personnel or licensed contractor operating from either a bucket or ladder truck, to the extent necessary to perform such work. ExteNet acknowledges and agrees that the installation and maintenance of Equipment on MGSA Property poses a risk of severe injury or death to persons who are not properly trained and equipped to work on such street pole or similar

improvements. Persons performing installation, maintenance and any other work related to the Equipment shall be appropriately trained and licensed by the California State Contractors Licensing Board and as may be required by any applicable California Public Utility Commission (CPUC) rules and regulations. ExteNet shall ensure that said persons observe all required safety requirements established by the CPUC, and Cal-OSHA, including tag-out lock and de-energization rules, ladder and lift restrictions, traffic control and work zone safety guidelines per the California Manual on Uniform Traffic Control Devices (CA MUTCD), and street right of way safety requirements and training in these areas.

8.2 Disconnect Device. To the extent feasible given the structural configuration of any particular MGSA streetlight pole(s), ExteNet shall install on all MGSA Property (each pole) a disconnect device such as a cutoff switch or similar mechanism. This disconnect device must disable and de-energize the Equipment so that any MGSA personnel performing work may upon prior notice to ExteNet's Network Operations Center ("NOC"), safely shut down the Equipment so that they are not exposed to electromagnetic frequencies (EMF) or radio frequencies (RF) generated by the Equipment. If installed, the disconnect device must be clearly identified and easily accessed with its operation being obvious and intuitive. ExteNet shall provide the MGSA with information and diagrams describing the use, function, and operation of the disconnect device for the instruction of MGSA or Vendor personnel. If such disconnect device has not been installed by ExteNet, upon notice from MGSA to ExteNet's NOC at least four (4) hours in advance, ExteNet shall temporarily disable and de-energize the Equipment at the requested location in connection with MGSA's work at such location.

8.3 Radio Frequency Emission Requirements. ExteNet will operate the ExteNet Equipment in a manner that complies with the Federal Communication Commission's ("FCC") or any more restrictive applicable standard subsequently adopted or promulgated by a governmental agency with jurisdiction regarding current or future Maximum Permissible Exposure (MPE) limits for radio frequency emissions.

9. NON - INTERFERENCE / COORDINATION OF WORK: The Equipment installed by ExteNet shall not unreasonably interfere with the primary purpose of MGSA Property including streetlight facilities (to provide illumination). Moreover, the Equipment installed by ExteNet shall not interfere with any other use by MGSA of the MGSA Property, any other city or county operation, or any other lawful operation by a third party whose equipment, attachments or use existed prior to the date of this Agreement. No license to any party other than ExteNet entered into by MGSA after the date of this Agreement shall allow such other party to interfere either physically or electromagnetically with the Equipment installed by ExteNet or operations permitted under this Agreement. ExteNet shall be responsible for the coordination of the Equipment installation work to avoid any interference with existing utilities, other city structures, or any city or other municipal transit operations. ExteNet shall be the MGSA's point of contact for all Equipment installation and except in the case of an emergency, all communication concerning Equipment installation shall be through ExteNet's representatives. No less than thirty (30) calendar days before commencing installation of MGSA approved Equipment on any MGSA Property, ExteNet shall (1) provide MGSA and its Vendor a proposed installation

schedule and (2) provide MGSA a list of names of contractors who will perform the installation work.

10. CO-LOCATION. Consistent with applicable laws and regulations (if any), MGSA maintains the right to decide if more than one carrier can locate on any individual pole (Co-location). The carrier not presently occupying the pole will not adversely impact the existing carrier. ExteNet is required to cooperate in good faith to facilitate Co-location if requested by MGSA.

11. MGSA's CONTROL OF MGSA PROPERTY / EMERGENCIES. MGSA reserves the right at any time to make alterations, additions, repairs, deletions or improvements to all or any part of the MGSA Property for any purposes. In performing such work, MGSA shall make good faith efforts to give ExteNet prior notice of such work and shall make reasonable efforts not to disrupt ExteNet's normal use of ExteNet's Equipment on MGSA Property. However, the MGSA's authority and ability to make changes to any MGSA Property shall not be impeded or delayed in any way by the presence of ExteNet's Equipment. The making of any such alterations, additions, repairs, deletions, or improvements shall in no event entitle ExteNet to any damages, relieve ExteNet of its obligation to pay license fees or to perform each of its other covenants or obligations established in this Agreement, provided that ExteNet can still operate the Equipment as intended in this Agreement. In the event of an emergency, the MGSA's work and needs shall take precedence over any operations of ExteNet on MGSA's Property. The parties shall notify each other of any emergency situation related to the MGSA Property at the emergency phone numbers listed below:

MGSA – Michael Frank, MGSA Executive Officer: (415) 798-6073

ExteNet – ExteNet Network Operations Center (NOC): 1-800-264-6620

12. REMOVAL OF EQUIPMENT. MGSA will provide ExteNet fifteen (15) business days prior written notice of any non-emergency work that will, or may, affect the Equipment and/or the ExteNet network.

12.1 Upon initial installation, ExteNet shall train MGSA's electrical contractors to deenergize the Equipment installed by ExteNet and whatever else necessary to meet safety regulations. Upon request of MGSA, ExteNet shall provide periodic supplemental training to MGSA's electrical contractor. In the event that MGSA is required by law or unavoidable circumstance to perform work on an emergency basis on any pole on which ExteNet has attached any of its Equipment under circumstances in which it is not possible to notify ExteNet sufficiently in advance, MGSA's electrical contractor will make every effort to ensure that all workers involved are familiar with the procedures for de-energizing ExteNet's Equipment and will use commercially reasonable care in handling and storing ExteNet's Equipment. In addition, MGSA will use commercially reasonable efforts to notify ExteNet of such circumstance as soon as practicable and will take all due care in removing and storing the Equipment. In the performance of any routine, special or emergency work, MGSA shall take all steps necessary to minimize any damage or interference to the Equipment and/or ExteNet's use thereof.

12.2 ExteNet will provide MGSA with ten (10) day prior written notice before removing any Equipment from any MGSA Property, specifying the Equipment to be removed and the MGSA Property from which it is to be removed.

12.3 Upon expiration or earlier termination of this Agreement, ExteNet will, at its expense, remove all remaining Equipment from the MGSA property within ninety (90) days of the date of such termination. In the event that ExteNet fails to remove any Equipment from the MGSA Property in a timely manner, no less than ninety (90) days, MGSA may at ExteNet's expense, remove, store, and dispose of such Equipment. ExteNet shall pay such actual and reasonable costs to MGSA within thirty (30) days of receipt of a written request from MGSA for such payment.

12.4 ExteNet shall post a bond or other security in an amount acceptable to MGSA in its sole discretion for the removal of its equipment and any other obligation of this License.

13. HAZARDOUS MATERIALS. ExteNet will not generate, store or dispose of any Hazardous Materials on or about the MGSA Property in violation of any applicable Laws. "Hazardous Materials" shall mean any chemical, substance, waste or material which has been or is hereafter determined by any federal, state or local governmental authority to be capable of posing risk of injury to health or safety, including without limitation, those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" under applicable Laws, and includes without limitation petroleum, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials and radon gas.

14. OWNERSHIP OF ELEMENTS. ExteNet will own or have the legal right to use and control the Equipment. Each Party will be responsible for service to elements owned or controlled by the specific Party.

15. NEW / REPLACEMENT STREETLIGHT FACILITIES. Based on discussions with local jurisdictions and MGSA, ExteNet may install replacement MGSA streetlight facilities at its own expense with custom-designed streetlights designed to accommodate ExteNet's Equipment. ExteNet shall transfer ownership of any replacement poles, including any illuminating apparatus and extension arm, to MGSA once the replacement pole is installed, pursuant to the offer of dedication form attached hereto as Exhibit "B." MGSA in its sole discretion shall determine if it will allow the replacement light.

16. POLE REPAIRS.

16.1 ExteNet will be responsible for repair and/or replacement of any ExteNet Equipment that is damaged or destroyed by third parties. ExteNet may enter into an agreement with MGSA's contracted electrical vendor (or other servicing vendor designated by MGSA from time to time) to handle any appropriate repair and/or replacement.

16.2 Any poles that were custom designed to accommodate ExteNet's equipment that are damaged or destroyed by third parties are the responsibility of ExteNet to replace or pay for replacement to the extent that ExteNet's Equipment remains attached thereto.

17. RELOCATION OF STREETLIGHT FACILITIES. ExteNet shall be responsible for covering any of MGSA's additional incremental costs associated with the relocation of any MGSA streetlight facilities which contains ExteNet Equipment that must be relocated due to a change in street realignment or other authorized city or county decision; provided such incremental costs directly result from or are attributable to ExteNet's Equipment and a copy of such anticipated incremental costs are provided to ExteNet in advance. A relocation of a street light due to a change in street alignment is under the authority of a city and county and ExteNet will meet any requirements imposed by the city or county due to such realignment.

18. INDEMNITY. ExteNet shall indemnify, protect, defend and hold harmless the MGSA, its Board Members, officers, employees, and agents, from and against claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including the costs of any "hazardous material," remedial actions of any kind and all other related costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense, to the extent caused directly, in whole or in part, by the negligence or willful misconduct of ExteNet, its directors, officers, employees, agents, contractors, subcontractors and representatives, or arising from ExteNet's construction, installation, operation, maintenance or repair of the Equipment, but not to the extent arising out of the negligence or willful misconduct of the MGSA.

18.1 The MGSA shall be liable only for the costs of repair to the damaged Equipment arising from the MGSA's negligence or willful misconduct, and the MGSA shall not be otherwise responsible for any damage, loss, or liability of any kind occurring by reason of anything done or omitted to be done by the MGSA or by any third party, including, without limitation, damages, losses, or liability arising from the MGSA's approval of Equipment placement.

19. INSURANCE. ExteNet shall carry and maintain for the duration of this Agreement the following types and limits of insurance or self-insurance ("basic insurance requirements") herein:

19.1 Commercial Automobile Liability Insurance, providing coverage on an occurrence basis for bodily injury, including death and property damage, with combined single limits of Two Million Dollars (\$2,000,000) for each accident covering all owned, non-owned and hired autos.

19.2 Commercial General Liability Insurance with a limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage and Two Million Dollars (\$2,000,000) general aggregate including contractual liability and products & completed operations coverage.

19.3 Workers' Compensation Insurance with statutory limits and employer's liability insurance with limits of One Million Dollars (\$1,000,000) per each accident/disease/policy limit.

19.4 All policies required of ExteNet shall be primary insurance as to the MGSA, its Board of Directors, officers, agents, or employees and any insurance or self-

insurance maintained by the MGSA shall be excess of the ExteNet's insurance and shall not contribute with it.

19.5 The required limits hereunder may be met by any combination of primary and excess or umbrella insurance.

19.6 Insurance is to be placed with insurers with a Bests' rating as approved by MGSA's Executive Officer, but in no event less than A-.

19.7 Upon receipt of notice from its insurer, ExteNet will provide MGSA with thirty (30) days prior written notice of cancellation of any policy required herein.

19.8 The insurance required hereunder shall be maintained until all equipment has been removed from MGSA property.

20. FORCE MAJEURE. MGSA and MGSA's agents shall not be liable or responsible to ExteNet, and ExteNet hereby waives any claim for, any loss or damage to any property or person or loss of use of any property occasioned by any cause, including without limitation by theft, fire, act of God, public enemy, riot, strike, insurrection, war, court order, requisition or other order of governmental body or authority.

21. DISCLAIMER; WAIVER. In no event shall either Party or such Party's respective agents or successors and assigns be liable for any contract damages of lost profits, consequential, special, exemplary, indirect, punitive or incidental losses or damages, including loss of use, loss of goodwill, lost revenues, loss of profits or loss of contracts and each party hereby waives such claims and releases the other Party from any such liability.

21.1 ExteNet acknowledges that California Civil Code Section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of Section 1542, or other similar provisions of Law, and intend that the waiver and release provided by this subsection shall be fully enforceable despite its reference to future or unknown claims.

22. ASSIGNMENT. Neither this Agreement, nor any interest in it, may be assigned or transferred by ExteNet without the prior written consent of the MGSA. Notwithstanding the foregoing or any provision in this Agreement to the contrary, ExteNet shall have the right to assign this Agreement to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with ExteNet, or to any entity into which ExteNet may be merged or consolidated or which purchases all or substantially all of the assets of ExteNet that are subject to this Agreement. ExteNet shall have no right to subcontract space on the streetlight pole to any third party.

The Parties acknowledge that Equipment deployed by Licensee in the License Areas pursuant to this Agreement may be owned and/or remotely operated by a single third-party wireless carrier customer ("Carriers") and installed and maintained by Licensee

pursuant to existing agreements between Licensee and a single Carrier. Such Equipment shall be treated as Licensee's Equipment for all purposes under this Master License and any applicable Pole License. A Carrier's ownership and/or operation of such Equipment shall not constitute an Assignment under this Master License, provided that Licensee shall not actually or purport to sell, assign, encumber, pledge, or otherwise transfer any part of its interest in the License Area to a single Carrier, or otherwise permit any portion of the License Area to be occupied by anyone other than itself. Licensee shall remain solely responsible and liable for the performance of all obligations under this Master License and applicable Pole Licenses with respect to any Equipment owned and/or remotely operated by a single Carrier.

23. BINDING EFFECT. The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the Parties to the Agreement and their permitted successors and assigns.

24. COMPLIANCE WITH ALL LAWS. Laws means any and all laws, regulations, ordinances, resolutions, judicial decisions, rules, permits and approvals applicable to ExteNet's use of its Equipment that are in force on the date of this Agreement or as lawfully amended including, without limitation, MGSA's code. ExteNet shall comply with all Laws with respect to ExteNet's use of its Equipment. This Agreement does not limit any rights ExteNet may have in accordance with Laws to install its own poles in the right of way or to attach ExteNet's Equipment to third-party poles located in the right of way. This Agreement shall in no way limit or waive either party's present or future rights under Laws. If, after the date of this Agreement, the rights or obligations of either Party are materially preempted or superseded by changes in Laws, the parties agree to amend the Agreement to reflect the change in Laws.

25. CORPORATE AUTHORITY. Each individual signing this Agreement on behalf of an entity represents and warrants that he or she is duly authorized to sign on behalf of such entity and to bind such entity fully to each and all of its obligations set forth in this Agreement.

26. EXHIBIT. In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and any exhibit attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail unless it clearly appears that such conflicting provision in such exhibit was intended to override the terms of this Agreement in the particular involved. The exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

27. GOVERNING LAW. The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. Venue for any action shall be in the Superior Court, County of Marin.

28. FURTHER ASSURANCES. Each Party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

29. NEGATION OF PARTNERSHIP. MGSA shall not become or be deemed a partner or joint venture with ExteNet or associate in any such relationship with ExteNet by reason

of the provisions of this Agreement. ExteNet shall not for any purpose be considered an agent of MGSA.

30. NO WAIVER OF DEFAULT. The failure of any Party to enforce against another Party any provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement. The acceptance of work or services, or payment for work or services, by MGSA shall not constitute a waiver of any provisions of this Agreement.

31. NOTICES. All notices relative to this Agreement shall be mailed by US first class mail and to the email below with acknowledgement of email by recipient. The parties shall be addressed as follows, or at any other address designated by notice:

MGSA: Email: michael@michaelsfrank.com

Marin General Services Authority
Attn: Michael Frank, Executive Officer
555 Northgate Drive, Suite 102
San Rafael, California, 94903

ExteNet:

ExteNet Systems (California) LLC
Attn: CFO
3030 Warrenville Road, Suite 340
Lisle, Illinois 60532
With copy to General Counsel & COO at same address

Copy email to NOTICE@extenetsystems.com

32. TERMINATION FOR CAUSE.

32.1 MGSA may terminate this Agreement or ExteNet's right to install, operate and maintain its Equipment on certain MGSA Property for cause upon ten (10) days' prior written notice sent by the MGSA to ExteNet. In that event, the MGSA may exercise its legal rights and/or equitable remedies reserved under this Agreement or by law at any time, including, without limitation, the right to recover any uncollected fees that would be due and payable by ExteNet to the MGSA for the period prior to such termination date.

32.2 A termination for cause means: (a) ExteNet has failed to cure a material default of this Agreement within thirty (30) days after it receives the MGSA's notice of default, or, if the default can be cured and such cure reasonably requires more than thirty (30) days to achieve, fails to commence such cure within the specified period but, thereafter, diligently continues such cure until completion thereof; (b) the CPUC, the FCC or other agency exercising jurisdiction over ExteNet has, by final order or action that is no longer subject to appeal, terminated or otherwise revoked ExteNet's approval, authorization, certification or license to operate the ExteNet Equipment on certain MGSA Property; (c) ExteNet's authority to do business in California has expired or is rescinded or terminated by final order or action that is no longer subject to appeal; or (d) bankruptcy.

32.3 Upon termination for cause with respect to certain MGSA Property, the right to attach to such MGSA Property will immediately terminate after the MGSA delivers ten (10) days prior written notice to ExteNet. In such event, ExteNet shall, within sixty (60) days of the effective date of termination of this Agreement or ExteNet's right to operate its equipment on specified MGSA Property, as applicable, remove or cause the removal of the ExteNet Equipment from such MGSA Property, or, if ExteNet fails to remove or cause such removal within such - sixty (60) day period, MGSA may remove the same for the account of and at the sole cost and expense of ExteNet; such actual and reasonable cost to be paid to MGSA from ExteNet within thirty (30) days from receipt of MGSA's written demand and reasonable supporting documentation. ExteNet shall continue to pay the any applicable fee due for such pole until the Equipment has been completely removed from the MGSA Property.

33. TERMINATION WITHOUT CAUSE. The Parties hereto agree that (a) ExteNet may terminate its right to operate its Equipment as it relates to any individual location upon thirty (30) days advance written notice to MSGA, and (b) MSGA may terminate ExteNet's right to operate its Equipment as it relates to any individual location upon (i) the occurrence of a material default hereunder related to such individual location that constitutes a cause event in accordance with Section 32.2 above, or, (ii) a determination by MSGA in its reasonable discretion that public necessity requires that the applicable streetlight be removed or relocated in accordance with Section 17 above, upon one hundred eighty (180) days advance written notice to ExteNet. Any termination of this Agreement shall not relieve ExteNet of any obligations, whether of indemnity or otherwise, which have accrued prior to such termination or completion of removal of ExteNet's Equipment, whichever is later, or which arises out of an occurrence happening prior thereto, except to the extent arising from the negligence or willful misconduct of MSGA. For the avoidance of doubt, the obligation of ExteNet to pay the Pole Fee (as provided in Section 3 above) for any individual location shall automatically terminate upon the removal of ExteNet's Equipment for such location. In the event a local agency engages in any street repair work that necessitates the removal of a streetlight, MGSA agrees that ExteNet may install new Equipment on any replacement light in accordance with all requirements of this Agreement.

33.1 Except as specifically set forth herein, MGSA and ExteNet agree that neither Party shall terminate this Agreement in the event of an alleged breach nor default hereunder before the defaulting Party has been given notice of and a reasonable time and opportunity to respond to and cure any such breach or default. For purposes of the foregoing, a reasonable time to cure any breach or default shall be deemed to be thirty (30) days after receipt of written notice

34. TERMINATION FOR PUBLIC NECESSITY. MGSA may for consideration of the public health, safety, or welfare, including, without limitation, safety, reliability, security or engineering reasons, terminate or otherwise modify the scope of the non-exclusive license granted by this Agreement with respect to any individual locations, upon thirty (30) days prior written notice. In the event a city or county law enforcement authority says it must use a streetlight pole, ExteNet will remove equipment and MGSA will use its best and most reasonable efforts to find a site to relocate ExteNet's equipment.

35. MERGER AND MODIFICATION. All prior agreements between the Parties are incorporated in this Agreement which constitutes the entire agreement. Its terms are intended by the Parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The Parties further intend this Agreement constitutes the complete and exclusive statement of its terms and no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding involving this Agreement. This Agreement may be modified only in a writing approved and signed by all the Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

**MARIN GENERAL SERVICES
AUTHORITY**

EXTENET SYSTEMS (CALIFORNIA) LLC

By: _____

By: _____

Title: _____
Executive Officer

Title: _____

Attachments:

Exhibit "A" – Streetlight Pole Request and Authorization Form

Exhibit "B" – Streetlight Pole Offer of Dedication by ExteNet and MGSA Acceptance Form

Exhibit "C" – Streetlight Pole Preauthorization Form

EXHIBIT A

STREETLIGHT POLE REQUEST AND RESERVATION FORM



STREETLIGHT PERMIT FORM (SUPRA)

PART 1

REQUEST FOR ACCESS

In accordance with Streetlight Master License Agreement between the Marin General Services Authority and ExteNet Systems (California)LLC ("ExteNet"), we hereby request permission to place attachments on MGSA streetlights designated below.

1. **Date of Submittal:** _____ 2. **Total # of Pages (including Form):** _____

3. **Total Number and Location of the Streetlights.**

#	Carrier ID#	Streetlight ID#	Street/Cross St.	New or Existing Pole (N or E)	Latitude	Longitude
1						
2						
*	Additional streetlight lists can be attached in this same format.					

4. **Backup Documentation Attached.**

- List of equipment to be attached, full construction drawings of the proposed installation detailing method of attachment, location of power and Systems runs into and up each pole, cut sheets, and actual product specs.
- All necessary land use permits (planning, building, encroachment) from the respective jurisdiction(s).
- Wet stamped report by a licensed engineer demonstrating: 1) pole can safely support the weight and wind loading of ExteNet's Equipment; and 2) total number of watts per installation on each pole and cumulative total number of watts including other systems placed within 100 feet of each pole are within acceptable safety limits for human exposure.

5. **Fees.** Annual Pole Fee - \$1,200 per pole as established by Paragraph 3.3 of the Agreement, commencing on the first day of the month following installation of Equipment, subject to increase in accordance with Paragraph 3.5 of the Agreement. Per-Pole Processing Fee - \$500 per pole submitted on this SUPRA form.

6. **Contact Information.** Please cite individual able to answer questions about this permit request:

ExteNet Systems (California)LLC

Authorizing Name: _____ Phone: (____) ____ - _____ E-mail: _____

7. **Signature of Authorized Representative.**

Print Name: _____ Signature: _____



PART 2 AUTHORIZATION

Subject to the terms and conditions of the Agreement, you are hereby authorized to install the attachments described in this Streetlight Pole Request and Authorization Form with the following exceptions:

MARIN GENERAL SERVICES AUTHORITY:

BY: _____
Executive Officer

Execution Date: _____

EXHIBIT B

STREETLIGHT POLE OFFER OF DEDICATION BY EXTENET AND MGSA ACCEPTANCE FORM



STREETLIGHT POLE OFFER OF DEDICATION AND ACCEPTANCE FORM

PART 1

OFFER OF DEDICATION

In accordance with Streetlight Master License Agreement between the Marin General Services Authority and ExteNet Systems (California) LLC, we hereby dedicate the following listed streetlights on this form to MGSA.

1. **Date of Submittal:** _____
2. **Total # of Pages (including Form):** _____
3. **Total Number of Streetlights to be Dedicated:** _____
4. **Location of the Streetlights.**

#	Carrier ID#	Streetlight ID#	Street/Cross St.
1			
2			
*	Additional streetlight lists can be attached in this same format.		

5. **Contact Information.** Please cite contact information of individual able to answer questions about this dedication:

ExteNet Systems (California) LLC

Authorizing Name:

Phone: (____)-____-____

E-mail: _____

6. **Signature of Authorized Representative.**

ExteNet Systems (California) LLC

Print Name: _____ Signature: _____



PART 2 **MGSA ACCEPTANCE**

Subject to the terms and conditions of the Agreement, the newly installed streetlights described in this Streetlight Pole Offer of Acceptance and Dedication Form are accepted with the following exceptions:

MARIN GENERAL SERVICES AUTHORITY:

BY: _____
Executive Officer

Execution Date: _____

EXHIBIT C

STREETLIGHT POLE RESERVATION FORM



STREETLIGHT POLE RESERVATION FORM

PART 1

REQUEST FOR AUTHORIZATION

In accordance with Streetlight Master License Agreement between the Marin General Services Authority and ExteNet Systems (California) LLC, we hereby request authorization to pursue an application to place attachments on the MGSA streetlights designated below.

1. **Date of Submittal:** _____ 2. **Total # of Pages (including Form):** _____
3. **Total Number and Location of the Streetlights.**

#	Carrier ID#	Streetlight ID#	Street/Cross St.	New or Existing Pole (N or E)	Latitude	Longitude
1						
2						
3						
4						
5						
*	Additional streetlight lists can be attached in this same format.					

4. **Contact Information.** Please cite contact information of individual able to answer questions about this permit request:

ExteNet Systems (California) LLC

Authorizing Name:

Phone: (____)-____-____

E-mail: _____

5. **Signature of Authorized Representative.**

Print Name: _____ Signature: _____

ExteNet Systems, LLC



PART 2 AUTHORIZATION

Subject to the terms and conditions of the Agreement, you are hereby authorized to pursue an application for a period of 60 days from the Execution Date below to install the attachments on MGSA owned Streetlights with the following exceptions:

MARIN GENERAL SERVICES AUTHORITY:

BY: _____
Executive Officer

Execution Date: _____



555 Northgate Drive, Suite 102
San Rafael, CA 94903-3680
415 446 4428
mgsastaff@marinjpas.org

**APPROVING THE STREETLIGHT MASTER LICENSE AGREEMENT FOR USE OF MGSA-
CONTROLLED SPACE ON STREETLIGHT POLES BY EXTENET SYSTEMS (CALIFORNIA) LLC**

RESOLUTION 2020 – 05

WHEREAS, personal wireless service providers and operators of distributed antenna system networks have expressed an interest in accessing and using MGSA-controlled space on streetlight poles in order to address capacity and coverage issues that are presented by the rapidly growing demand for wireless data service in Marin County;

WHEREAS, the MGSA wishes to accommodate the requests of parties which desire access to and use of the MGSA infrastructure for the purpose of making expanded and advanced telecommunications and broadband services available, taking into account the MGSA's primary obligation to provide reliable streetlight service; and

WHEREAS, permitting authority in the local right-of-way sits with local jurisdictions; and

WHEREAS, the MGSA has developed the Streetlight Master License Agreement, which contain the standard rates, terms and conditions applicable to streetlight pole access and usage for the purpose of facilitating the deployment of such facilities in Marin County;

WHEREAS, the MGSA approval does not authorize any specific installation of facilities by ExteNet Systems (California), LLC and instead sets forth the general terms and conditions applicable to such future installations that may be approved by local Marin jurisdictions and establishes the process and requirements that the MGSA will follow;

NOW THEREFORE, BE IT RESOLVED, that the MGSA Board of Directors 1) authorizes the MGSA Executive Officer to execute the Streetlight Master License Agreement; and 2) delegates to the Executive Officer the authority to execute on behalf of the MGSA any documents necessary to administer the Agreement and non-substantive modifications to the SMLA that may be required and approved by MGSA's legal counsel.

Adopted this 12th day of March 2020.

Ayes: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Noes: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Absent: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Craig Middleton, MGSA Board President

Attested By:

Michael S. Frank, Executive Officer



555 Northgate Drive, Suite 102
San Rafael, CA 94903-3680
415 446 4428
mgsastaff@marinjpas.org

MEMORANDUM

DATE: March 12, 2020
TO: MGSA Board of Directors
FROM: Michael S. Frank, Executive Officer
SUBJECT: Accept MarinMap Server as MGSA Property

Recommendation

Pass Resolution 2020-03 accepting a server purchased for MarinMap as MGSA property.

Discussion

The Joint Powers Agreement that created the MGSA states the following in Section 7.3:

“The Authority may adopt budgets, determine fees and dues of Members, retain personnel, retain legal counsel, retain consultants and engineers, acquire grants, acquire, hold, lease and dispose of real and personal property, use the power of eminent domain, accept donations, sue and be sued, and possesses all other powers associated with the operation of a joint powers authority on behalf of the citizens, and public agencies within Marin County. No property, real or personal, shall be considered property of the Authority unless the Authority formally accepts it by Resolution. The Authority may exercise implied as well as these expressed powers.”

A computer server was purchased for MarinMap by the County Matrix Team for \$37,825 as outlined in the FY 2018/19 MGSA Budget. The attached resolution would add the server to MGSA’s Comprehensive Annual Financial Report as an asset. This piece of equipment is the only asset listed there. The Authority’s other asset of 15,500 streetlights is not included.

Attachments

- **Attach E1** - Draft Resolution 2020-03, titled “Accept MarinMap Server as MGSA Property”



555 Northgate Drive, Suite 102
San Rafael, CA 94903-3680
415 446 4428
mgsastaff@marinjpas.org

**MARIN GENERAL SERVICES AUTHORITY
ACCEPT MARINMAP ASSET AS MGSA PROPERTY**

RESOLUTION 2020 - 03

WHEREAS, the Marin General Services Authority is a Joint Powers Authority governed by its October 1, 2005 Joint Powers Agreement; and

WHEREAS, the Agreement states that, "No property, real or personal, shall be considered property of the Authority unless the Authority formally accepts it by Resolution."; and

WHEREAS, a computer server was purchased for the MarinMap Program of MGSA.

NOW THEREFORE, BE IT RESOLVED, that the Marin General Services Authority hereby categorizes the computer server as an asset of the Authority.

Adopted this 12th day of March 2020.

Ayes: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Noes: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Absent: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Craig Middleton, MGSA Board President

Attested By:

Michael S. Frank, Executive Officer



555 Northgate Drive, Suite 102
San Rafael, CA 94903-3680
415 446 4428
mgsastaff@marinjpas.org

MEMORANDUM

DATE: March 12, 2020
TO: MGSA Board of Directors
FROM: Michael S. Frank, Executive Officer
SUBJECT: Ad Hoc Budget Subcommittee Appointment

Recommendation

By motion, appoint three Board Members to an Ad Hoc Budget Subcommittee.

Discussion

The MGSA Executive Officer is requesting input through a Budget Subcommittee regarding the upcoming FY 2020/21 Proposed Budget. New programs and changes in structure necessitate a fresh look at how administrative costs are allocated. It is anticipated that only one meeting will be needed.



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MEMORANDUM

DATE: March 12, 2020

TO: MGSA Board of Directors

FROM: Michael S. Frank, Executive Officer

SUBJECT: Notice to MGSA Members Regarding Its Intent to Add the Cable Television Franchise and Public, Educational, and Government Access Program and Transition MTA Program Responsibilities to MGSA

Recommendation

Approve Resolution 2020-04, directing the Executive Officer to notice all member agencies of the Board's intent to add a new program, Cable Television Franchise and Public, Educational, and Government Access Program, to Exhibit A and B of the Marin General Services Authority Joint Powers Agreement.

Background

The Marin Telecommunications Agency (MTA) was formed in 1997 as a Joint Powers Authority (JPA) to oversee local cable television franchise agreements. In the early years, MTA was considered a potential telecommunications policy and operations oversight agency. In 2006, the State of California passed the Digital Infrastructure and Video Competition Act ("DIVCA"), which eliminated local cable television franchises and created the existing state franchise system. Additional changes to state and federal law have continued to erode local government regulatory control and oversight of telecommunications facilities.

MGSA was first approached in 2017 about the possibility of taking over MTA in some form. Due to several factors, discussions about the feasibility of MGSA assuming MTA responsibilities did not proceed at that time. With the recent resignation of the MTA Executive Officer, the MTA Board again looked at options for the Agency's future and engaged MGSA in discussions. The MGSA Board expressed general support if the transition made sense from an efficiency and financial perspective and if the member agencies understood that MGSA would not be taking on significant telecommunications policy issues.

The collective financial benefit to member jurisdictions is significant. While expenses the first fiscal year will most likely remain the same, future years should generate annual savings in the \$100,000 range as elements of MTA's work program become fully incorporated into the program structure of MGSA. Additionally, multiple shared service levels are already occurring with MGSA and MTA. The two JPAs coordinate and/or have the same office space, accounting and financial staff, office furnishings and equipment, records management systems, internet provider, phone system, insurance providers and independent auditors. The MTA Executive Officer and the MGSA Executive Officer also provide general administrative backup to each other and share some limited clerical support.

The MTA Board, following policy and legal analysis, voted to transition MTA into MGSA. It was determined by MTA that the dissolution of the MTA as an entity and the assumption by MGSA of programmatic responsibilities would be the most viable, efficient, and financially beneficial option. On February 12, 2020 the MTA Board of Directors voted 9 – 0, with one member absent, to initiate the transition by June 30, 2020 assuming MGSA's Board's support and needed complimentary actions.

Discussion

At the March 12, 2020 Board Meeting, MGSA will consider 1) an amendment to its Joint Powers Agreement to include the Cable Franchise and Public, Educational, and Government Access as a program under MGSA; and 2) introduce a Public, Education and Government (PEG) Fee Ordinance that will allow the MGSA to collect franchise fee and PEG fee revenues on behalf of participating member agencies starting July 1, 2020.

The Marin General Services Authority is a Joint Powers Authority governed by its October 1, 2005 Joint Powers Agreement. Article 7 of the Agreement states in Section 7.1, "The Authority shall have all of the necessary powers and authorities granted by law to provide the services authorized in Exhibit A, which may be amended from time-to-time pursuant to Article 13." The referenced Article 13 of the Agreement states in Section 13.1, "This Agreement may be amended only upon the two-thirds (2/3) affirmative vote of all the Directors of the Board with such proposed amendment having been noticed to Members thirty (30) days prior to the date of the meeting." The attached resolution also updates Exhibit B which defines the funding of the Program

Next Steps

The transition of MTA programmatic responsibilities to MGSA requires numerous agencies to act. All MTA member jurisdictions need to terminate their existing telecommunications ordinance and pass a resolution assigning their authorities to MGSA. Some of the additional tasks that need to occur are described below:

- The Designated Access Provider Agreement between MTA and the Community Media Center of Marin (CMCM) will be transferred to MGSA for future management, and to assure continuation of the community media services that the MTA jurisdictions have enjoyed for many years.
- MTA and MGSA will be working with the County of Marin and other member agencies to develop a seamless transition of financial and administrative functions from MTA to MGSA.
- MTA and MGSA will coordinate to assign or transition all contracts to MGSA.
- MTA and MGSA will prepare a joint estimated Fiscal Year 2020/21 budget for the Program which will both continue the administrative/financial/contract functions of MTA while also providing transition funding to complete the process over the next six to 12 months.
- The MTA's PEG fee ordinances for Comcast, AT&T and Horizon will be transferred to MGSA for future management.

Attachments

Attach G1: Resolution 2020-04 titled, "Notice to MGSA Members Regarding the Intent to Add the Cable Television Franchise and Public, Educational, and Government Access Program to MGSA"



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mgsastaff@marinjpas.org

NOTICE TO MGSA MEMBERS REGARDING THE INTENT TO ADD THE CABLE TELEVISION FRANCHISE AND PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS PROGRAM TO MGSA

RESOLUTION 2020 - 04

WHEREAS, the Marin General Services Authority is a Joint Powers Authority governed by its October 1, 2005 Joint Powers Agreement; and

WHEREAS, Article 7 of the Agreement states in Section 7.1, "The Authority shall have all of the necessary powers and authorities granted by law to provide the services authorized in Exhibit A, which may be amended from time-to-time pursuant to Article 13."; and

WHEREAS, the referenced Article 13 of the Agreement states in Section 13.1, "This Agreement may be amended only upon the two-thirds (2/3) affirmative vote of all the Directors of the Board with such proposed amendment having been noticed to Members thirty (30) days prior to the date of the meeting."

NOW THEREFORE, BE IT RESOLVED, that the Marin General Services Authority hereby directs its Executive Officer to notice all Member agencies of the Board's intent to add a new program, Cable Television Franchise and Public, Educational, and Government Access Program, to the attached Exhibit A and Exhibit B of the Joint Powers Agreement.

Adopted this 12th day of March 2020.

Ayes: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Noes: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Absent: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Craig Middleton, MGSA Board President

Attested By:

Michael S. Frank, Executive Officer

**A JOINT POWERS AGREEMENT
CREATING
THE MARIN GENERAL SERVICES AUTHORITY**

EXHIBIT A

DUTIES OF MARIN GENERAL SERVICES AUTHORITY

1. Own and insure the streetlights of member agencies that have been transferred to the Authority by the member agencies.
2. Advise the County of Marin on the non-point discharge pollution prevention system for Marin known as the Marin County Storm Water Pollution Prevention Program.
3. Govern and manage the Marin County taxicab regulation program.
4. Manage the abandoned vehicle abatement program.
5. Explore, investigate, advise, and assist member agencies on energy issues.
6. Lease access to agency owned streetlights.
7. Provide regional information management services, including PC support, networks and shared applications.
8. Manage the MarinMap Geographic Information System.
9. **Manage the Cable Television Franchise and Public, Educational, and Government Access Program for participating members.**

EXHIBIT B

FUNDING OF MARIN SPECIAL BUDGET ITEMS

1. Streetlights - Members shall pay the costs of this function in proportion to the number of streetlights owned by the Authority in each member's jurisdiction.
2. Taxicab - Funded by fees set by the Authority.
3. Abandoned Vehicle Program - Funded by state imposed surcharge on vehicle registration.
4. Technology Services - Funded by user charges paid by participating agencies.
5. MarinMap - Funded by member fees, grants and special assessments on members. General Services Authority's administration, accounting and legal costs will be reimbursed by the MarinMap budget.

6. **Cable Television Franchise and Public, Educational, and Government Access Program**

- **Program Administration funded by Cable Television Franchise Fees.**
- **Public Access TV funded by Public, Educational, and Government (PEG) Fees.**



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mgsastaff@marinjpas.org

MEMORANDUM

DATE: March 12, 2020

TO: MGSA Board of Directors

FROM: Michael S. Frank, Executive Officer

SUBJECT: Introduction and First Reading of an Ordinance to Establish a Public, Educational, and Governmental (“PEG”) Access Fee

Recommendation

Establish a PEG access fee by adopting the attached Ordinance No. 001. The Ordinance will require both a first and second reading. If the MGSA Board concurs, the appropriate motion for introduction of the proposed Ordinance and first reading would be:

- “A motion to introduce by title only and waive further reading of Ordinance No. 001, an Ordinance of the Marin General Services Agency Establishing a Public, Educational, and Governmental (PEG) Access Fee.”

Background

The Marin Telecommunications Agency (MTA) Board, following policy and legal analysis, voted to transition MTA programmatic responsibilities to MGSA. It was determined by MTA that the dissolution of the MTA as an entity and the assumption by MGSA of responsibilities would be the most viable, efficient, and financially beneficial option. On February 12, 2020 the MTA Board of Directors voted 9 – 0, with one member absent, to initiate the transition by June 30, 2020 assuming MGSA’s Board’s support and needed complimentary actions.

At the March 12, 2020 Board Meeting, MGSA will consider 1) an amendment to its Joint Powers Agreement to include the Cable Franchise and Public, Educational, and Government Access as a program under MGSA; and 2) introduce a Public, Education and Government (PEG) Fee Ordinance that will allow the MGSA to collect franchise fee and PEG fee revenues on behalf of participating member agencies starting July 1, 2020. The collection of PEG fees requires the adoption of an ordinance, which is the topic of this Agenda Item.

Discussion

In 2006, the California Legislature adopted the Digital Infrastructure and Video Competition Act (“DIVCA”), which changed the manner in which video services are regulated by replacing local franchising with a state franchising system administered by the California Public Utilities Commission. DIVCA requires state franchise holders to offer at least three channels to each community in which they operate for public, educational, and governmental (“PEG”) programming. DIVCA also authorizes local entities to adopt an ordinance imposing a fee on video service providers that hold a state franchise to support PEG programming facilities. The maximum amount allowed under state law is 1% of a franchise holder’s gross revenues.

Under Public Utilities Code Section 5870(n), a local entity must adopt an ordinance in order to establish a PEG access fee. The MTA adopted an ordinance in February 2007 to establish a PEG access fee as to state-franchised video service providers operating in MTA member jurisdictions. The proposed Ordinance is substantially the same as the ordinance adopted by the MTA, and would similarly establish a PEG access fee as to state franchise holders that provide video services in any MGSA member jurisdictions that have authorized the MGSA to collect PEG access fees on their behalf.

Public Utilities Code Section 5870(n) also provides that a PEG access fee ordinance shall expire, but may be reauthorized, “upon the expiration of the state franchise.” To that end, the proposed Ordinance contains a provision to automatically reauthorize the Ordinance upon the expiration of each state franchise operating within a jurisdiction that has delegated responsibility for collection of PEG access fees to the MGSA, until the Board takes an affirmative action to stop such auto-renewals.

If adopted, the proposed Ordinance will become effective 30 days after the date of the second reading and adoption; however, state franchise holders will not become subject to the MGSA’s PEG access fee until the later of the following two dates: (1) the date that the MTA has been terminated and at least a majority of MTA’s member agencies have adopted an ordinance to authorize the MGSA to collect PEG access fees on their behalf; or (2) July 1, 2020. The purpose of the delayed implementation date is to avoid subjecting a video service provider to both the MTA and MGSA PEG access fee at the same time, while also ensuring that there is no lapse in applicable fees being collected on behalf of member agencies.

Attachments

- **Attach H1** – Ordinance No. 001 titled, “Ordinance of the Marin General Services Authority Establishing a Public, Educational, and Governmental (PEG) Access Fee”



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ORDINANCE NO. 001

ORDINANCE OF THE MARIN GENERAL SERVICES AUTHORITY ESTABLISHING A PUBLIC, EDUCATIONAL, AND GOVERNMENTAL (PEG) ACCESS FEE

WHEREAS, the Marin General Services Authority (“Authority”) is a joint powers authority formed on October 1, 2005, by the City of Belvedere, Town of Corte Madera, Town of Fairfax, City of Larkspur, City of Mill Valley, City of Novato, Town of Ross, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon, County of Marin, Bel Marin Keys Community Services District, and Marinwood Community Services District, for the purpose of financing, implementing, and managing the various municipal services assigned to the Authority; and

WHEREAS, the Digital Infrastructure and Video Competition Act of 2006, codified at Public Utilities Code section 5800 et seq., established a state franchising system administered by the California Public Utilities Commission for video service providers; and

WHEREAS, Public Utilities Code Sections 5830(j) and 5870(n) allows a local entity such as a joint powers authority to adopt an ordinance establishing a fee on state-franchised video service providers to provide support for Public, Educational, or Governmental (“PEG”) channel facilities in an amount not to exceed 1% of the video service provider’s gross revenues; and

WHEREAS, Section 5870(n) states that such an ordinance establishing a PEG access fee shall expire, and may be reauthorized, upon expiration of a state video franchise; and

WHEREAS, the City of Belvedere, Town of Corte Madera, Town of Fairfax, City of Mill Valley, Town of Ross, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon, and County of Marin, which together are the member agencies of the Marin Telecommunications Agency (“MTA”), have each adopted a resolution authorizing and delegating such power to the Authority to collect franchise and PEG access fees on its behalf and perform other functions carried out by the MTA, effective as of the date of termination of the MTA; and

WHEREAS, the Authority desires to establish a PEG access fee, pursuant to Public Utilities Code Section 5870(n).

NOW, THEREFORE, THE MARIN GENERAL SERVICES AUTHORITY DOES ORDAIN AS FOLLOWS:

Section 1. A “Public, Educational, or Governmental (PEG) Access Fee Ordinance” is adopted to read as follows:

“PUBLIC, EDUCATIONAL, AND GOVERNMENTAL (PEG) ACCESS FEE

1. In accordance with California Public Utilities Code Section 5870(n), the Marin General Services Authority hereby establishes a Public, Educational, and Governmental (PEG) Access Fee.
2. Video service providers, as defined by Public Utilities Code Section 5830(t), that have been issued a state franchise pursuant to Public Utilities Code Section 5840, shall designate a sufficient amount of capacity on their networks to allow the provision of the same number of PEG channels as are provided by the incumbent cable operator, up to a maximum of three channels. Notwithstanding the foregoing, such video service providers shall provide an additional PEG channel when the nonduplicated locally produced or provided video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis.
3. Video service providers that have been issued a state franchise must pay to the Marin General Services Authority a PEG Access Fee of one percent (1%) of the video service provider’s gross revenues to support PEG channels and PEG activities consistent with federal law. The fee shall be remitted to the Marin General Services Authority quarterly, within 45 days after the close of each quarter, at the same time as the video service provider remits its franchise fee pursuant to Public Utilities Code Section 5860(h).
4. If the video service provider does not pay the PEG Access Fee when due, the video service provider shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).
5. Pursuant to Public Utilities Code Section 5860(i), the video service provider must keep records of its gross revenues for at least four years after those revenues are recognized in its books. The Marin General Services Authority may review the business records of the video service provider to ensure that the PEG Access Fee is being paid properly. If an audit of the video service provider indicates that the PEG Access Fee has been underpaid by more than five percent (5%), the video service provider must pay the reasonable and actual costs of the audit, as well as the delinquent fees.

- 6. This Ordinance shall apply to any state-franchised video service provider operating within a jurisdiction that has authorized the Marin General Services Authority to collect PEG access fees on its behalf.
- 7. Upon the expiration of any existing or future state video franchise(s) held by any video service provider operating within a jurisdiction that has authorized the Marin General Services Authority to collect PEG access fees on its behalf, this Ordinance shall automatically be reauthorized to the extent required by Public Utilities Code Section 5870(n). This Ordinance shall so renew until such time that the Board of Directors takes formal affirmative action to cease the reauthorization.”

Section 2. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 3. Effective Date. This Ordinance shall be in full force and effect 30 days following the date of its passage by the Board of Directors of the Marin General Services Authority; however, no state-franchised video service provider shall be subject to the PEG Access Fee established hereunder until the later of the following two dates: (1) the date of termination of the MTA and authorization of the Authority to collect PEG access fees by at least a majority of the MTA’s member agencies, or (2) July 1, 2020. This Ordinance, or a summary thereof, shall be published once before the expiration of fifteen days after its passage in a newspaper of general circulation published in the County of Marin, with the names of the members of the Board of Directors voting for and against.

INTRODUCED at a meeting of the Marin General Services Authority Board on March 12, 2020.

PASSED AND ADOPTED at a regular meeting of the Marin General Services Authority Board on May 14, 2020 by the following vote:

Ayes: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Noes: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Absent: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Craig Middleton, MGSA Board President

Attested By:

Michael S. Frank, Executive Officer



555 Northgate Drive, Suite 102
San Rafael, CA 94903-3680
415 446 4428
mgsastaff@marinjpas.org

MEMORANDUM

DATE: March 12, 2020

TO: MGSA Board of Directors

FROM: Michael S. Frank, Executive Officer

SUBJECT: Streetlight Maintenance Upcoming Contract Development Process and State of the Industry

Recommendation

Accept the state of the industry memo prepared by the subcommittee of the Marin Public Works Association and determine the desired process to use for finding a streetlight maintenance contractor.

Background

MGSA entered a streetlight maintenance contract on May 28, 2015 with DC Electric Group, Inc. The contract was for a one-year period ending June 30, 2016 with an option to extend the contract up to two additional two-year terms for a total possible life of five years ending June 30, 2020. The MGSA Board in consultation with the Marin Public Works Director's Association approved the extensions in the contract.

Discussion

The Executive Officer attended the Marin Public Works Director's Association meeting on December 19, 2019 to discuss their thoughts about the appropriate process to use for a new streetlight maintenance contract and to request their assistance in that process. The jurisdictions universally said they were extremely happy with the customer service they received from DC Electric. Following a discussion, the Association overwhelmingly voted that MGSA should negotiate directly with DC Electric. I suggested that at a minimum, we should look at some comparable rates from other companies. Two Public Works Directors, Julian Skinner, Larkspur and Sean Condry, San Anselmo (MGSA Board Member) agreed to assist with that review.

At the January 9, 2020 MGSA Board Meeting, the Board voted to have the subcommittee appointed by the Marin Public Works Director's Association research the state of the industry and report back at the March 12, 2020 MGSA Board meeting. The subcommittee prepared the attached memo for the Board's consideration.

Attachment

I1 Attach Memo on streetlight contract from Marin Public Works Director's Association subcommittee

Memo

To: Michael Frank, Executive Officer, Marin General Services Authority
From: Julian Skinner and Sean Condry
Date: March 4, 2020
Subject: MGSA Streetlight Contract

As requested, please find below 'State of the Industry' for streetlight maintenance services for your consideration in determining whether to enter into contract negotiations with current vendor, DC Electric for another term or publishing a Request for Proposals (RFP) open to new providers. It is our understanding that the current DC Electric contract negotiated in 2015 expires June 30, 2020.

Note that the contract for streetlight services is a service contract and not a public project bid. There is no known legal requirement to solicit bids for these services.

In 2015 MGSA selected DC Electric as the best provider responding to the RFP. At the December MPWA meeting informal polling, an overwhelming majority of **Public Works Directors indicated they were satisfied with the streetlight maintenance services provided by DC Electric and would support a new contract / contract extension** with DC Electric versus publishing an RFP. There was follow-up discussion about the dollar value of the contract and the need to perform some due diligence in establishing costs moving forward.

Note that costs are not typically included in the RFP process and are negotiated only with the vendor whose proposal is determined to be the best response to the RFP. An RFP process is not required to set rates and costs for a new contract/ contract extension with DC Electric. Given that they were the preferred vendor from the most recent RFP process and that there is general satisfaction with their performance **a new contract at new negotiated rates seems appropriate.**

The current contract includes payment based on cost per streetlight. Contracts for neighboring agencies were reviewed to determine if DC Electric's rates were competitive in the market. Most agencies' streetlight maintenance contracts are on a time and materials basis or a lump sum fee and not based on the cost per

Memo to Michael Frank
 From: Julian Skinner and Sean Condry
 Date: March 4, 2020
 MGSA Streetlight Contract

streetlight model. Two other agencies, Emeryville and Fremont have contracts with payment set on a per streetlight basis.

Agency	Provider	LED cost per SL/month	HPS cost per SL/ month
MGSA	DC Electric	\$ 0.83	\$ 1.93
Emeryville	DC Electric	\$ 0.95	\$ 2.55
Fremont	Bear Electric	\$ 0.80	\$ 2.00

Given that the cost comparison available shows DC Electric MGSA rates are similar to market it is likely that **cost negotiations with DC Electric would result in costs similar to market** moving forward. A more thorough review of costs could be performed, if necessary, during contract negotiation.

A new contract would include opt-out provisions for MGSA. Two things could trigger cancelling a new contract and issuing a new RFP – one would be dissatisfaction with DC Electric and another would be some drastic change in the space where newer technology may be available from other vendors.



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 mgsastaff@marinjpas.org

MEMORANDUM

DATE: March 12, 2020

TO: MGSA Board of Directors

FROM: Michael S. Frank, Executive Officer

SUBJECT: Office Space Lease at 555 Northgate Drive, Suite 102, San Rafael

Recommendation

Approve Resolution 2020-02 authorizing the Executive Officer to execute a lease agreement for office space at 555 Northgate Drive, Suite 102, San Rafael.

Discussion

The MGSA office cubes, files, records, and conference room meeting space have been located at 555 Northgate Drive, San Rafael since June 2009. The current lease expires at the end of March, 2020. The current space, Suite 102, accommodates MGSA as well as the Marin Transportation Agency (MTA). With the assistance of County Property Management staff, the Executive Officer has negotiated the attached lease.

The new lease terms are generally the same as we currently have. The lease amount will remain the same the first year and then increase by 3%. The proposed new lease is for two years with two four-year extensions. The short lease term is due to the uncertainty about space needed in the future given the possible dissolution of MTA as well as lack of clarity about program scale and timeline of wireless small cell antennas on MGSA streetlights.

Months	Square Feet	Monthly Rent	Annual Increases	Cost per Sq. Ft.*
1 to 12	626	\$1,865.62	--	\$2.98
13 to 24	626	\$1,921.59	3.00%	\$3.07

The current location serves both MTA and MGSA exceedingly well. We have easy access to the County Civic Center for meetings and for posting of Board meeting agendas. In addition, furniture and the use of a large conference room is included in our lease.

MGSA is the “Tenant” under the lease. Depending on the future structure of MTA, MGSA will be reimbursed an appropriate allocation of lease costs. The full lease document is attached.

Attachments

- **Attach J1** - Draft Lease By and Between Professional Investors 31, LLC Owner as “LESSOR” And Marin General Services Authority as “LESSEE”

- **Attach J2** – Resolution 2020-02 titled, “Lease Agreement for MGSA Office Space at 555 Northgate Drive, San Rafael.”

LEASE AGREEMENT

BY AND BETWEEN

Professional Investors 31, LLC

Owner
as "LESSOR"

And

Marin General Services Authority

as "LESSEE"

Dated to be effective _____, 2020 for reference purposes

LEASE

1. **PARTIES:** This Lease is made and entered into on _____, 2020 between **Professional Investors 31, LLC, Owner** (herein called "LESSOR") and **Marin General Services Authority, a nonprofit Joint Powers Authority,** (herein called "LESSEE").

2. **PREMISES:** LESSOR does hereby lease to LESSEE and LESSEE hereby leases from LESSOR that certain commercial space (herein called "Premises") indicated on **Exhibit A**, attached hereto and reference thereto made a part hereof, said Premises being agreed, for the purposes of this Lease, to have a total area of approximately **626 useable square feet**, described as **Suite 102** on the First (1st) Floor of that certain building known as **555 Northgate Drive, Suite 102, San Rafael, CA 94903** ("Building"). LESSEE's proportionate share of building is **three point ten percent (3.10%)**.

LESSEE and its agents, vendors, employees and invitees have exclusive right to the free use of the Premise for the intended purpose. Common areas include sidewalks, parking areas, driveways, hallways, copy machine in hallway, stairways, public restrooms, closet, lounge, gardens, common entrances, lobby, common conference room(s) and other similar public areas and access ways.

3. **TERM:** The term of this Lease shall be for **two (2) years ("Lease Term")** and shall commence on **April 1, 2020** and terminate on **March 31, 2022**.

4. **RENT:** LESSEE agrees to pay LESSOR as rental for the Premises, without prior notice or demand, in accordance with the schedule set forth below:

Months	Square Feet	Monthly Rent	Annual Increases	Cost per Sq. Ft.*
1 to 12	626	\$1,865.62	--	\$2.98
13 to 24	626	\$1,921.59	3.00%	\$3.07

*Figures are rounded to the nearest cent.

Each rent payment to be made on or before the last day of the first full calendar month of the term hereof and a like sum per schedule on or before the last day of every successive calendar month thereafter during term hereof.

Rent for any period during the Lease Term, which is for less than one (1) month, will be a prorated portion of the monthly installment herein, and based upon a thirty (30) day month. Said rental will be paid to LESSOR in lawful money of the United States of America, which will be legal tender at time of payment, at the address specified in **Paragraph 8** or to such other place as LESSOR may

designate in writing. Electronic fund transfers may be allowed according to LESSEE guidelines.

5. **OPTION TO EXTEND LEASE:** LESSEE will have **two (2) options** to extend the term of the Lease at fair market value at **four (4) years each option**. If exercising the option, LESSEE will give LESSOR prior written notice of its intention to extend not less than **four (4)** months from Lease expiration.
6. **RENT INCREASE:** On each annual anniversary date of the Lease Term, the monthly rent will be increased by a fixed rate of **three percent (3.0%)** over that which existed in the previous year and as reflected in the above schedule in **Paragraph 4**.
7. **TERMINATION CLAUSE:** LESSEE may terminate this Lease with such termination to be made upon written notice to LESSOR. LESSEE may cancel this Lease pursuant to this authority by giving written notice to LESSOR at least ninety (90) days prior to the date when such termination shall become effective. The amount of rent remaining to be paid for the month in which the LESSEE actually vacates the Premises will be prorated on a daily basis through the end of said month.
8. **NOTICES:** All notices and demands, which may or are to be required or permitted to be given by either party to the other hereunder, must be in writing and shall be deemed to be fully given in any of the manners specified herein and delivered to the addresses specified below:
 - A. On the day delivered in person during normal business hours, with proof of delivery by a signature at the office of the delivery; or
 - B. Two business days after being sent by United States mail, certified postage prepaid; or
 - C. On the date of delivery via overnight carrier that makes deliveries at the address being delivered.
 - D. By email from LESSOR to LESSEE. Email addresses listed below.

Notices to LESSOR: Professional Investors 31, LLC
350 Ignacio Boulevard, Ste. 200
Novato, CA 94949
Attn: Lewis Wallach

Notices to LESSEE: Marin General Services Authority
555 Northgate Drive, Suite 102
San Rafael, CA 94903
Attn: Executive Officer
Main Email: mgsastaff@marinjpas.org
Secondary Email: michael@michaelsfrank.com

Either party may from time to time designate an address for notices by providing written notice to the other party.

9. **ASBESTOS CONTAINING CONSTRUCTION AND HAZARDOUS MATERIALS:**
To the best of LESSOR's knowledge and belief, there are no asbestos-containing materials in the Building or on the land on which the Building was constructed and the space will be operated and maintained free of hazard from Asbestos Containing Construction Materials (ACCM).

LESSOR represents that there are no environmental hazards or violations in or around the Building that pose a present danger to health, life or safety. To the extent that there are any environmental hazards or violations in the future, LESSOR will correct at its own cost.

10. **OPERATING EXPENSES**

The **Base Costs** will mean the LESSEE's percentage of Operating Expenses, as defined herein, incurred and paid for by the LESSOR during the calendar year of **2020** (the Base Year). A **Comparison Year** is defined as each calendar year after the Base Year.

The **Operating Expenses** are all direct costs of operation and maintenance, as determined by standard accounting practices, including but not limited to real property taxes, insurance, electrical, plumbing, elevator, fire sprinkler, janitorial, maintenance, management fees, building security, sidewalks, parking lot, driveways, water and sewer, signage, HVAC, pest control, PG&E, roof, utilities, exterior work and all cost for common area maintenance and repairs. Operating Expenses shall not include depreciation of the Building of which the Premises are a part or equipment therein, loan payments, executive salaries or real estate broker's commissions.

If the Operating Expenses incurred and paid by the LESSOR for the Comparison Year on account of the operation or maintenance of the Building of which the Premises are a part are in excess of the Operating Expenses paid or incurred for the Base Year, then the LESSEE shall pay **three point ten percent (3.10%)** of the increase. This percentage is that portion of the total rentable area of the Building occupied by the LESSEE hereunder. LESSOR will endeavor to give to LESSEE on or before the first day of March of each year following the respective Comparison Year a statement of the increase in rent payable by LESSEE hereunder, but failure by LESSOR to give such statement by said date will not constitute a waiver by LESSOR of its right to require an increase in rent. Upon receipt of the statement for the first Comparison Year, LESSEE will pay in full the total amount of the increase due for the Comparison Year and, in addition for the then current year, the amount of any such increases will be used as an estimate for said current year and this amount will be divided into **twelve (12)** equal monthly installments and LESSEE will pay to LESSOR, concurrently with

the regular monthly rent payment next due following the receipt of such statement, an amount equal to **one (1)** monthly installment multiplied by the number of month's from January in the calendar year in which said statement is submitted to the month of such payment, both months inclusive. Subsequent installments will be payable concurrently with the regular monthly rent payments for the balance of that calendar year and will continue until the next Comparison Year's statement is rendered. If the next or any succeeding Comparison Year results in a greater increase in Operating Expenses, then upon receipt of a statement from LESSOR, LESSEE will pay a lump sum equal to **Three point ten percent (3.10%)** of such total increase in Operating Expenses over the Base Year, less the total of the monthly installments to be paid for the next year, following said Comparison Year, will be adjusted to reflect such increase. If in any Comparison Year the LESSEE's share of Operating Expenses is less than the preceding year, then upon receipt of LESSOR's statement, any overpayment made by LESSEE on the monthly installment basis provided above will be credited towards the next monthly rent falling due and the estimated monthly installments of Operating Expenses to be paid will be adjusted to reflect such lower Operating Expenses for the most recent Comparison Year. No single year's increase will exceed **three percent (3%)** of the previous year. LESSEE will not be responsible for increases in property taxes due to a transfer in ownership, tenant improvements or other capital additions to the Building.

When the final determination is made of LESSEE's share of Operating Expenses for the year in which this Lease terminates, even though the Lease Term has expired and LESSEE has vacated Premises, LESSEE will pay any increase due over the estimated expenses paid and conversely, any overpayment made in the event said expenses decrease shall be immediately refunded by LESSOR to LESSEE.

Operating Cost Audit. LESSOR shall maintain records concerning estimated and actual Operating Expenses allocable to the Premises for no less than **twenty-four (24)** months following the period covered by the statement or statements furnished to LESSEE, after which time LESSOR may dispose of such records. Such inspection, if any, will be conducted by a Qualified Person, no more than once each year, during LESSOR's normal business hours within **one-hundred eighty (180)** calendar days after receipt of LESSOR's written statement of Operating Expense adjustments to the Premises for the previous year, upon first furnishing LESSOR at least **twenty (20)** calendar days prior written notice. Any errors disclosed by the review will be promptly corrected by LESSOR; provided, however, that if LESSOR disagrees with any such claimed errors, LESSOR will have the right to cause another review to be made by an auditor of LESSOR and LESSEE's choice. In the event the results of the review of records (taking into account, if applicable, the results of any additional review caused by LESSOR) reveal that LESSEE has

overpaid obligations for a preceding period, the amount of such overpayment will be credited against LESSEE's subsequent installment of Base Rent or other payments due to LESSOR under the Lease. In the event that such results show that LESSEE has underpaid its obligations for a preceding period, the amount of such underpayment will be paid by LESSEE to LESSOR with the next succeeding installment obligation of estimated Operating Expense adjustments to the Premises. If the actual Operating Expense adjustments to the Premises for any given year were improperly computed and if the actual Operating Expense adjustments to the Premises are overstated by more than **five percent (5%)**, LESSOR will reimburse LESSEE for the cost of its audit. For purposes of this subparagraph, the term "Qualified Person" means an accountant or other person experienced in accounting for income and expenses of office projects (such as LESSEE's real estate representative), who is engaged solely by LESSEE on terms which do not entail any compensation based or measured in any way upon any savings in or reduction in Operating Expense adjustments to the Premises achieved through the inspection process described in this subparagraph.

11. MAINTENANCE:

During the Lease Term, LESSOR will maintain the leased Premises in good order, condition and repair so as to minimize breakdowns and loss of the LESSEE'S use of the Premises caused by deferred or inadequate maintenance, including but not limited to:

- (1) Repair and maintenance of the exterior of the leased Premises in good, vermin-free and weather tight operating condition and appearance;
- (2) Generally furnishing prompt, good quality repair of the Building and appurtenances, including heating, plumbing and electrical systems;
- (3) Repairing and maintaining the structural portions of the Building, including electrical, mechanical, plumbing, septic, water proofing systems and/or equipment and keep in good and safe working order and repair the aforementioned so as to prevent leaking or overflowing from occurring on the Premises.

LESSOR will provide prompt repair and correction on any damage to leased Premises except damages arising from willful or negligent act of the LESSEE'S agent, vendors, employees, or invitees. LESSOR will repair damage to the interior of the Premises or the Building to which the Premises are part of and reimburse LESSEE for damaged goods and materials owned by LESSEE caused by the failure to maintain the Building in good repair. LESSOR's duty includes making repairs to damage to the interior caused by roof leaks and/or interior and exterior wall leaks.

12. FAILURE TO PERFORM: The covenant to pay rent and the covenant to provide any service, supply, utility, maintenance, or repair required under this Lease are

interdependent. In the event of any failure by LESSOR to provide any service, supply, utility, maintenance, repair, or replacement required under this Lease that in any manner affects LESSEE's use, enjoyment, or occupancy of the Premises and Building, LESSEE shall provide LESSOR with a written notice specifying the nature of failure. The notice shall specify a reasonable time frame for LESSOR to remedy said failure. However, if the failure persists past **five (5) business days** allowed within the written notice, or if LESSOR refuses, fails, or neglects to comply with such notice, or in the event of an emergency constituting a hazard to health or safety, the LESSEE may by contract or otherwise, perform the required work or service at its own cost and in addition to any other remedy the LESSEE may have, deduct from any payment or payments under this Lease, then or thereafter due, the resulting cost to the LESSEE, including all administrative costs. If the LESSEE elects to perform any such requirement, the LESSEE and each of its contractors shall be entitled to access to any and all areas of the Building, access to which is necessary to perform any such requirement, and the LESSOR shall afford and facilitate such access. Alternatively, the LESSEE may deduct from any payments under this Lease, then or thereafter due, an amount that reflects the reduced value of the contract requirement not performed. No deduction from Rent pursuant to this clause shall constitute a default by the LESSEE under this Lease.

13. **USE:** LESSEE and/or LESSEE vendors or partners may use the Premises for general office and interview rooms for the operation and administration of LESSEE functions for the general public and any other use allowed by law.
14. **PARKING:** LESSOR will provide on-site non-exclusive and undesignated automobile parking for LESSEE's patrons and staff. LESSOR shall not reserve parking spaces in the Building parking lots for other tenants in the Building without giving LESSEE prior notice and the first option to reserve parking spaces, the number of spaces in the proportional amount of the LESSEE's square feet to the Building's square feet.
15. **SIGNAGE:** LESSEE shall be permitted standard Building directory and suite signage/identification at LESSOR's expense.
16. **HOURS OF OPERATION:** LESSEE shall have access to the Premises 24 hours per day, 7 days per week. Building operating hours are 7am-6pm Monday through Friday.
17. **QUIET ENJOYMENT:** Subject to payment by LESSEE of the Rent and performance of all of the covenants, conditions and provisions on LESSEE's part to be observed and performed under this Lease, LESSEE shall have quiet possession and quiet enjoyment of the Premises during the term hereof.
18. **COMPLIANCE WITH LAW:** LESSOR agrees and warrants that the Premises will comply with all applicable Federal, State, and Local laws, statutes, regulations,

and codes that are in effect as of the date of lease commencement. The parties agree and understand that this includes, but not limited to, applicable laws, statutes, regulations, and codes under the Americans with Disabilities Act, State of California's Disabled Persons Act, FEHA, as it pertains to accessibility, and the CCR Title 24 (Building Code) Chapter 11B, and Marin County Codes Title 7, Chapter 7.70 and Title 23, Chapter 23.19 as they relate to COUNTY's occupancy of Premise.

In the event that the Premises are found to be deficient with respect to the applicable laws, statutes, regulations, or codes, then LESSEE has the option to either terminate the Lease without penalty, upon thirty (30) days written notice, or allow LESSOR a period of thirty (30) days after notice is provided to correct said deficiencies. In the event that LESSEE allows LESSOR thirty (30) days to correct said deficiencies and LESSOR fails to perform by the end of thirty (30) days, then LESSEE may terminate the Lease by written notice effective thirty (30) days thereafter.

Through this Lease, LESSOR is given specific notice of the following regulations that are applicable:

(a) Pursuant to Marin County Code Chapter 7.70 "Smoking Regulations" neither LESSOR nor its agents, employees, contractors, guests or invitees shall smoke or permit smoking anywhere within the Premises or less than 20' feet from any entrance to the Premises. LESSOR may designate smoking areas which are at least 20' feet from the building.

(b) Pursuant to Marin County Code Chapter 23.19 "Integrated Pest Management Program" neither LESSOR nor its agents, employees, contractors, guests or invitees shall use or permit to be used pesticides considered harmful to toxic, carcinogenic, or harmful to the environment. Questions regarding the Integrated Pest Management Program may be directed to the County's Integrated Pest Management Coordinator and information may be found by searching the County's website at www.MarinCounty.org.

(c) Access Laws
LESSOR will cooperate with LESSEE with respect to the completion of future ADA compliance work, if any, to the Building and exterior common areas as determined by the local building department.

(d) Certified Access Specialist Disclosures
Pursuant to California Civil Code Section 1938, the Building that has not been inspected by a Certified Access Specialist ("CASp") - a CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, the

LESSOR may not prohibit the LESSEE from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the LESSEE, if requested by the LESSEE. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

LESSEE agrees to notify LESSOR immediately if LESSEE receives notification or otherwise becomes aware of: (a) any condition or situation on, in, under, or around the Parcel or Building that may constitute a violation of any Access Laws; or (b) any threatened or actual lien, action, or notice that the Land or Building is not in compliance with any Access Laws. If LESSEE is responsible for such condition, situation, lien, action or notice under this paragraph, LESSEE's notice to LESSOR shall include a statement as to the actions LESSEE proposes to take in response to such condition, situation, lien, action, or notice.

LESSEE will not alter or permit any assignee or subtenant or any other person to alter the Premises in any manner that would violate any Access Laws or increase LESSOR's responsibilities for compliance with Access Laws, without the prior approval of the LESSOR. In connection with any such approval, LESSOR may require a certificate of compliance with Access Laws from an architect, engineer, or other person acceptable to LESSOR. LESSEE agrees to pay the reasonable fees incurred by such architect, engineer, or other third party in connection with the issuance of such certificate of compliance. LESSOR's consent to any proposed LESSEE alteration shall (a) not relieve LESSEE of its obligations or indemnities contained in this paragraph or this Lease or (b) be construed as a warranty that such proposed alteration complies with any Access Law.

19. **WASTE AND NUISANCE:** LESSEE and LESSOR will not commit or allow the commission of any waste upon the Premises, or any public or private nuisance, or any other act or thing that may disturb the quiet enjoyment of any other tenants in the Building. LESSEE and LESSOR shall not use the Premises or allow their use, in whole or in part, for any purpose or use that is in violation of any laws, ordinances, regulations, or rules of any public authority applicable to the Premises.
20. **COPIER AT HALLWAY:** LESSEE will retain right to locate a copier in the hallway adjacent to Premises. LESSOR will provide and maintain electrical and data connections.
21. **NOT USED**
22. **ALTERATIONS AND ADDITIONS:** LESSEE may not make or suffer to be made any alterations, additions, or improvements to the Premises or any part thereof

without the written consent of LESSOR first being obtained, which will not be unreasonably withheld. Any alterations, additions or improvements to or of said Premises including, but not limited to, wall covering, paneling, air conditioning units and build-in cabinet work, but excepting movable furniture, equipment, and trade fixtures, will on the expiration of the term become a part of the realty and belong to the LESSOR and will be surrendered with the Premises. In the event LESSOR consents to the making of any alterations, additions, or improvements to the Premises by LESSEE, the same will be made at LESSEE's sole cost and expense.

23. **LIENS:** LESSEE agrees to keep the Premises and the property on which the Premises are located free from liens arising out of any work performed, materials furnished, or obligations incurred by LESSEE. LESSEE shall keep LESSOR fully informed of any improvement on the Premises and shall permit LESSOR to post and record notices of non-responsibility (when appropriate) within **ten (10)** days after the commencement of any work or improvement, so that LESSOR's interest in the Premises will not be subject to mechanic's liens.
24. **ASSIGNMENT AND SUBLETTING:** LESSEE is hereby authorized to sublease to other entities subject to LESSOR's consent. LESSEE shall not assign this Lease, or any interest herein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and employees of LESSEE and LESSEE patrons, excepted) to occupy or use the Premises, or any portion thereof, to a vendor or other person without prior written consent of LESSOR, which consent shall not be unreasonably withheld. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by any other person. Any such assignment or subletting without such consent shall be void, and shall, at the option of LESSOR, terminate this Lease. Any transfer or assignment of this Lease by operation of law without written consent of LESSOR shall make this Lease voidable at the option of the LESSOR. LESSEE shall share all profits from sublease or assignment income 50/50 with LESSOR after deducting all costs for marketing and subleasing the space including rent abatement, downtime, tenant improvement allowances and commissions.

Every assignment of Lease must recite that it is and shall be subject and subordinate to the provisions of this Lease, and the termination of this Lease shall constitute a termination of every such assignment of Lease.

At the execution of this Lease, LESSEE specially will have the right to sublease to the Marin Telecommunications Agency (MTA).

25. **HOLD HARMLESS:** LESSEE shall indemnify and hold harmless LESSOR against and from any and all claims arising from LESSEE's use of Premises and shall indemnify and hold harmless LESSOR against and from any and all claims

arising from any breach or default in the performance of any obligation on LESSEE's part to be performed under the terms of this Lease. LESSEE, upon notice from LESSOR, shall defend the same at LESSEE's expense by counsel reasonably satisfactory to LESSOR.

LESSOR shall indemnify and hold harmless LESSEE against and from any and all claims arising from LESSOR's or other tenants' use of Premises and shall indemnify and hold harmless LESSEE against and from any and all claims arising from any breach or default in the performance of any obligation on LESSOR's part to be performed under the terms of this Lease. LESSOR, upon notice from LESSEE, shall defend the same at LESSOR's expense by counsel reasonably satisfactory to LESSEE.

26. **SUBROGATION:** As long as their respective insurers so permit, LESSOR and LESSEE hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage, and other property insurance policies existing for the benefit of the respective parties. Each party shall obtain any special endorsements, if required by their insurer, to evidence compliance with the aforementioned waiver.
27. **LIABILITY INSURANCE:** LESSEE will, at LESSEE's expense, obtain and keep in force during the term of this Lease commercial general liability insurance of not less than \$1,000,000 against liability arising out of the use, occupancy, or routine maintenance of the Premises with a general aggregate or excess of not less than \$2,000,000. LESSEE shall deliver to LESSOR prior to occupancy of the Premises as proof of required insurance, a letter of Self-Insurance that acknowledges coverage limits and the LESSOR's status as an additional insured.
- LESSOR will provide proof of commercial general liability insurance to LESSEE on an annual basis with limits of not less than \$1,000,000 per occurrence for broad form property damage, and bodily injury, personal injury, and products and completed operations coverage of the same limits as the policy limits, with a general aggregate or excess of not less than \$2,000,000 and shall name the LESSEE as additionally insured by endorsement of LESSOR's policy.
28. **HOLD OVER:** LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that LESSEE holds over, such occupancy will be a tenancy from month-to-month and Rent shall be increased to 120% of the Rent applicable immediately preceding the expiration or termination. Holdover Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by LESSOR to any holding over by LESSEE.
29. **INSPECTION:** LESSOR reserves the right to enter the Premises by prior appointment during operating hours, except holidays, and to employ the proper

representative or contractor in order to see that the property is being reasonably cared for in full compliance with the terms and conditions of this Lease.

- 30. DESTRUCTION:** In the event of partial destruction of the Building during the term by fire, flood, earthquake or any other cause, and provided that such partial destruction does not annul or void Lease under its terms, LESSOR shall make repairs, provided that such repairs can be made within **ninety (90)** days (subject to delays beyond LESSOR's control and delays in making insurance adjustments by LESSOR). However, in such event, LESSEE will be entitled to a proportionate reduction of rent while such repairs are being made, such proportionate reduction to be based upon the extent to which the making of such repairs interferes with the business carried on by LESSEE in the Premises, as determined by mutual consent. LESSEE will not be responsible for the continuance of rent payments if as a consequence of any cause the entire Premise is rendered unusable, unsafe, or uninhabitable. If needed repairs cannot be made within **ninety (90)** days, either LESSOR or LESSEE may terminate this Lease. Such termination shall be effected by giving notice to the other party within **thirty (30)** days of the date that the damage occurs or, if not the same, within **thirty (30)** days of the date that the parties learn the Premises cannot be repaired within **ninety (90)** days of the damage, whichever is later. If the Lease is not so terminated, LESSOR shall make such repairs within a reasonable time with this Lease continuing in full force and effect and the rent proportionately reduced while the repairs are being made.

In the event the Building is destroyed to the extent of not less than one-third of the then-current replacement cost thereof (excluding foundations), LESSOR or LESSEE may elect to terminate this Lease, regardless of whether the Premises are damaged, whether the partial destruction is caused by casualty which is covered by insurance, or whether the repairs can be made within **ninety (90)** days. A total destruction of the Building shall immediately terminate the Lease.

In the event of termination of this Lease pursuant to any of the provisions of this **Paragraph 30**, rent will be apportioned on a per diem basis and will be paid to the date of the casualty. In no event may LESSOR be liable to LESSEE for any damages resulting from the happenings of such casualty or from the repairing or reconstruction of the Premises or of the building, or from the termination of this Lease as herein provided.

- 31. EMINENT DOMAIN:** If the whole or any substantial part of the Building or appurtenant real property is taken or condemned by any competent authority for any public use or purpose, the term of this Lease will end upon, and not before, the date when the possession of the part so taken is required for such use or purpose, provided that at LESSOR's option, this Lease shall not terminate if LESSEE's Premises are not taken and if LESSEE's access to and use of its Premises are not materially and detrimentally affected by the taking. Current rent shall be apportioned as of the date of such termination. LESSEE will be entitled to make a claim for the value of LESSEE's trade fixtures, equipment, furniture,

accessibility improvements, furnishings, and personal property, and for LESSEE's moving expenses.

32. **TRADE FIXTURES:** LESSEE will retain title to all of the LESSEE'S trade fixtures, equipment, movable furniture and personal property. LESSEE may, upon the expiration or sooner termination of Lease, remove all of the LESSEE'S trade fixtures, equipment, movable furniture, and personal property, and must restore premises to "as is" condition by repairing any damage to walls and structures caused by their removal.
33. **ADVICE OF COUNSEL:** Each party hereto had been provided full opportunity for review of this agreement by legal counsel. Therefore, no presumption or rule that any ambiguity be construed against the drafting party will apply to the interpretation or enforcement of this Lease.
34. **BROKERS:** Each party hereto warrants that it has had no dealings with any real estate broker or agents in connection with the negotiation of this Lease and it knows of no other real estate broker or agent in connection with this Lease.
35. **GENERAL PROVISIONS:**
- (i) **Plats and Riders.** Clauses, plats and riders, if any, signed by the LESSOR and the LESSEE and endorsed on or affixed to this Lease are a part hereof.
 - (ii) **Marginal Headings.** The marginal headings and titles to the paragraphs of this Lease are not a part of this Lease and have no effect upon the construction or interpretation of any part thereof.
 - (iii) **Time.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.
 - (iv) **Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.
 - (v) **Not used.**
 - (vi) **Prior Agreements.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters will be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease is not effective or binding on any party until fully executed by both parties hereto.

- (vii) Subordination and Attornment. LESSEE accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now of record against the Premises, the Building or the Property, and to renewals, modifications, refinancings and extensions thereof for which LESSOR provides written notice to LESSEE (collectively referred to as a "Mortgage"). This clause is self-operative, but no later than thirty (30) business days after written request from LESSOR or any holder of a Mortgage (each, a "Mortgagee" and collectively, "Mortgagees"), LESSEE shall execute a commercially reasonable subordination agreement that does not modify the terms of this Lease. As an alternative, a Mortgagee has the right at any time to subordinate its Mortgage to this Lease. No later than thirty (30) business days after written request by LESSOR or any Mortgagee, LESSEE shall, without charge, attorn to any successor to LESSOR's interest in this Lease. LESSOR shall obtain, prior to Commencement Date, a non-disturbance agreement in form and content reasonably satisfactory to LESSEE that must provide, so long as LESSEE is not in default under this Lease, LESSEE's use and possession of the Premises may not be disturbed in the event of a foreclosure under any mortgage, deed of trust, or other lien to which this Lease is currently or hereafter subordinate. Notwithstanding any terms in this paragraph, LESSEE will execute all of these documents after 1) the LESSEE has reviewed and approved the documents; and 2) the LESSOR and/or Mortgagee execute the LESSEE approved documents.
- (viii) Severability. If any provision of this Lease is found by a court of competent jurisdiction to be invalid, void or illegal, such finding shall in no way effect, impair or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.
- (ix) Cumulative Remedies. No remedy or election hereunder may be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.
- (x) Choice of Law. This Lease shall be governed by the laws of the State of California, in which the Premises are located.
- (xi) Force Majeure. Subject to **Paragraph 30**, in the event that either party shall be delayed, hindered in or prevented from the performance of any act or obligation required under this Lease by reason of acts of God, strikes, lockouts, labor troubles or disputes, inability to procure, or shortage of materials or labor, failure of power or utilities, delay in transportation, fire, vandalism, accident, flood,

severe weather, other casualty, Governmental Requirements (including mandated changes in the Plans and Specifications or the Tenant Improvements resulting from changes in pertinent Governmental Requirements or interpretations thereof), riot, insurrection, civil commotion, sabotage, explosion, war, natural or local emergency, acts or omissions of others, the period for the performance of any such act or obligation shall be extended for the period equivalent to the period of such delay.

SIGNATURE PAGE

By signing below, the parties agree to the above-mentioned terms and conditions.

LESSOR

LESSEE

Professional Investors 31, LLC

Marin General Services Authority

Date: _____

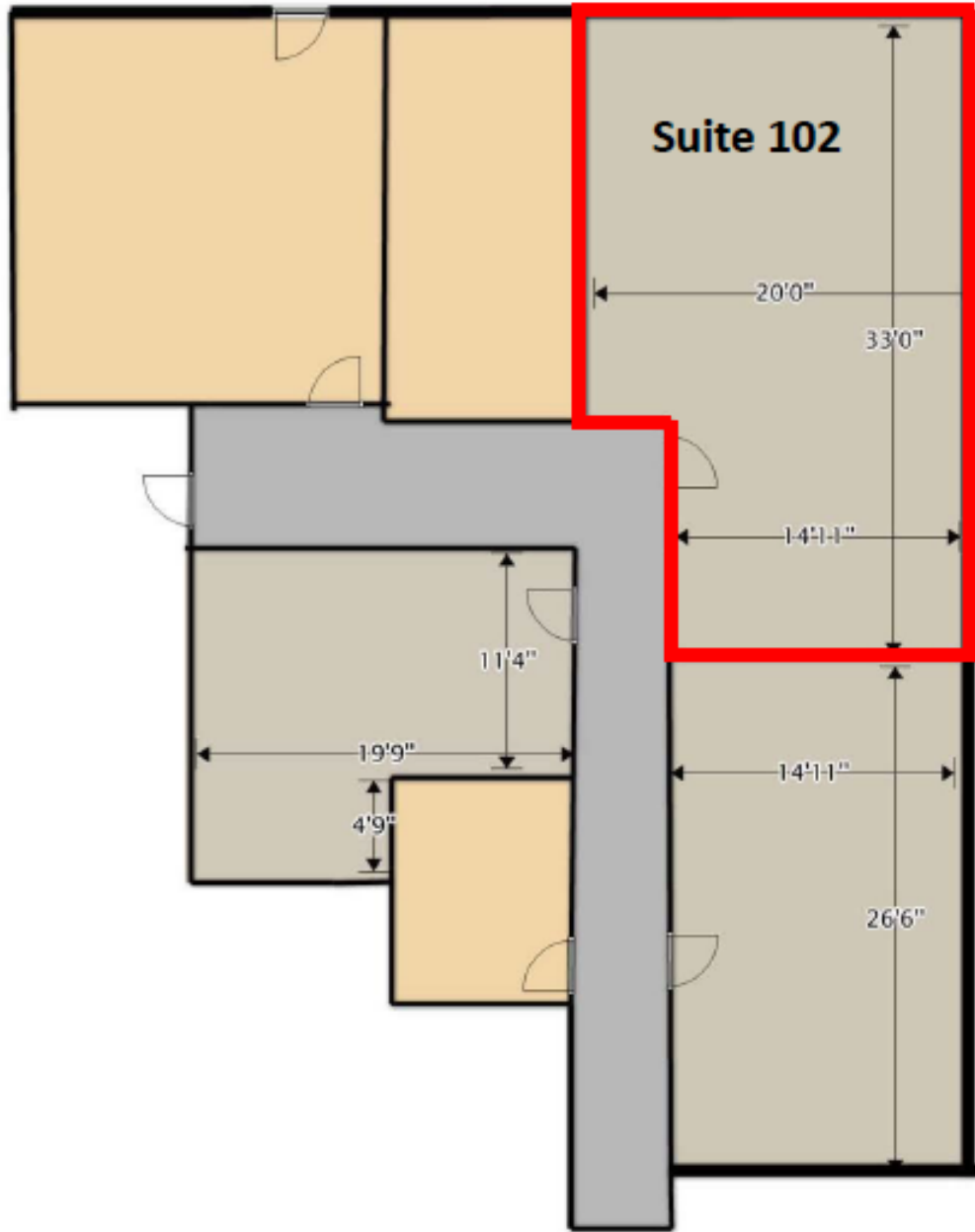
Date: _____

By: _____
Lewis Wallach, President

By: _____
Michael Frank, Executive Officer

Exhibit A – Overall Floor Plan

555 Northgate Dr., Northwest Corner



*Not to scale. For measurement purposes only.



End of Lease



555 Northgate Drive, Suite 102
San Rafael, CA 94903-3680
415 446 4428
mgsastaff@marinjpas.org

**MARIN GENERAL SERVICES AUTHORITY
LEASE AGREEMENT FOR MGSA OFFICE SPACE AT 555 NORTHGATE DRIVE, SAN RAFAEL**

RESOLUTION 2020 - 02

WHEREAS, MGSA presently leases office space at 555 Northgate Drive, San Rafael; and

WHEREAS, the lease agreement for said space expires on March 31, 2020; and

WHEREAS, Professional Investors 31, LLC has offered to continue to lease space to MGSA for a two-year term with two four-year options to extend.

NOW THEREFORE, BE IT RESOLVED, that the MGSA Board of Directors authorizes the MGSA Executive Officer to execute a lease agreement, extending the term of MGSA tenancy at 555 Northgate Drive, San Rafael until March 31, 2022 at the terms described in the staff report dated March 12, 2020.

Adopted this 12th day of March 2020.

Ayes: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Noes: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Absent: Alilovich, Chanis, Condry, McGill, Middleton, Nicholson, Poster

Craig Middleton, MGSA Board President

Attested By:

Michael S. Frank, Executive Officer



555 Northgate Drive, Suite 102
San Rafael, CA 94903-3680
415 446 4428
mgsastaff@marinjpas.org

MEMORANDUM

DATE: March 12, 2020

TO: MGSA Board of Directors

FROM: Michael Frank, Executive Officer

SUBJECT: MGSA Executive Officer Recruitment and Article 9.3 of MGSA JPA Agreement

Recommendation:

Report out from the MGSA Ad Hoc Board Subcommittee appointed to conduct a recruitment for an Executive Officer.

Background:

Section 9.3 of the MGSA JPA agreement calls for the Authority (MGSA) to “solicit competitive applications, including compensation for the services of executive officer every four years.”

The current Executive Officer, Michael Frank, entered into a Professional Services Agreement on February 8, 2016 as a result of a competitive recruitment process. He is interested in continuing his contract and therefore could not participate in managing the recruitment process. At the January 9, 2020 MGSA Board Meeting the Board appointed a three-person Ad Hoc Board Subcommittee to conduct the recruitment.